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# 2008 ANNUAL REPORT

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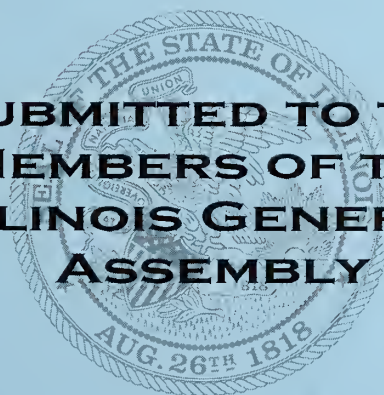
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ILLINOIS DOCUMENTS



## OF THE JOINT COMMITTEE ON ADMINISTRATIVE RULES

SUBMITTED TO THE  
MEMBERS OF THE  
ILLINOIS GENERAL  
ASSEMBLY



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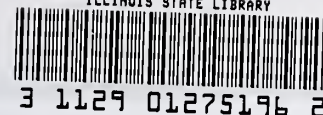
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2008  
ANNUAL REPORT  
of the  
**JOINT COMMITTEE ON  
ADMINISTRATIVE RULES**

*Submitted to the Members of the  
Illinois General Assembly*

Senator Maggie Crotty, Co-Chair  
Representative Brent Hassert, Co-Chair

Senator J. Bradley Burzynski  
Senator James F. Clayborne, Jr.  
Representative John Fritchey  
Senator Randall Hultgren  
Representative Lou Lang  
Representative David Leitch  
Representative David Miller  
Representative Rosemary Mulligan  
Senator Dan Rutherford  
Senator Ira Silverstein

Vicki Thomas  
Executive Director

700 Stratton Building  
Springfield IL 62706



# JOINT COMMITTEE ON ADMINISTRATIVE RULES

ILLINOIS GENERAL ASSEMBLY

CO-CHAIR:

SEN. MAGGIE CROTTY

CO-CHAIR:

REP. ANGELO "SKIP" SAVIANO

EXECUTIVE DIRECTOR:

VICKI THOMAS



700 STRATTON BUILDING  
SPRINGFIELD, ILLINOIS 62706  
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SEN. J. BRADLEY BURZYNSKI  
SEN. RANDALL HULTGREN  
SEN. MATTIE HUNTER  
SEN. DAN RUTHERFORD  
SEN. IRA SILVERSTEIN  
REP. JOHN FRITCHEY  
REP. LOU LANG  
REP. DAVID MILLER  
REP. DONALD L. MOFFITT  
REP. ROSEMARY MULLIGAN

February 1, 2009

Honorable Members of the 96<sup>th</sup> General Assembly:

As Chairs of the Joint Committee on Administrative Rules, we hereby submit the 2008 Annual Report of that Committee. An overview of the Committee's rules review activities can be found in the following pages.

The Joint Committee on Administrative Rules gratefully acknowledges your continued support and assistance. We encourage all members of the General Assembly to take an active role in this vital oversight function guaranteeing that the public right to know is protected through an open rulemaking process. We welcome your suggestions and comments on agency rules and the role of the Committee. Only as each elected representative becomes concerned and involved in the oversight process can the Committee ensure that the intent of the legislation we pass is maintained.

Sincerely,

Handwritten signature of Maggie Crotty in cursive script.

Senator Maggie Crotty  
Co-Chair

Handwritten signature of Angelo "Skip" Saviano in cursive script.

Representative Angelo "Skip" Saviano  
Co-Chair





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# JCAR

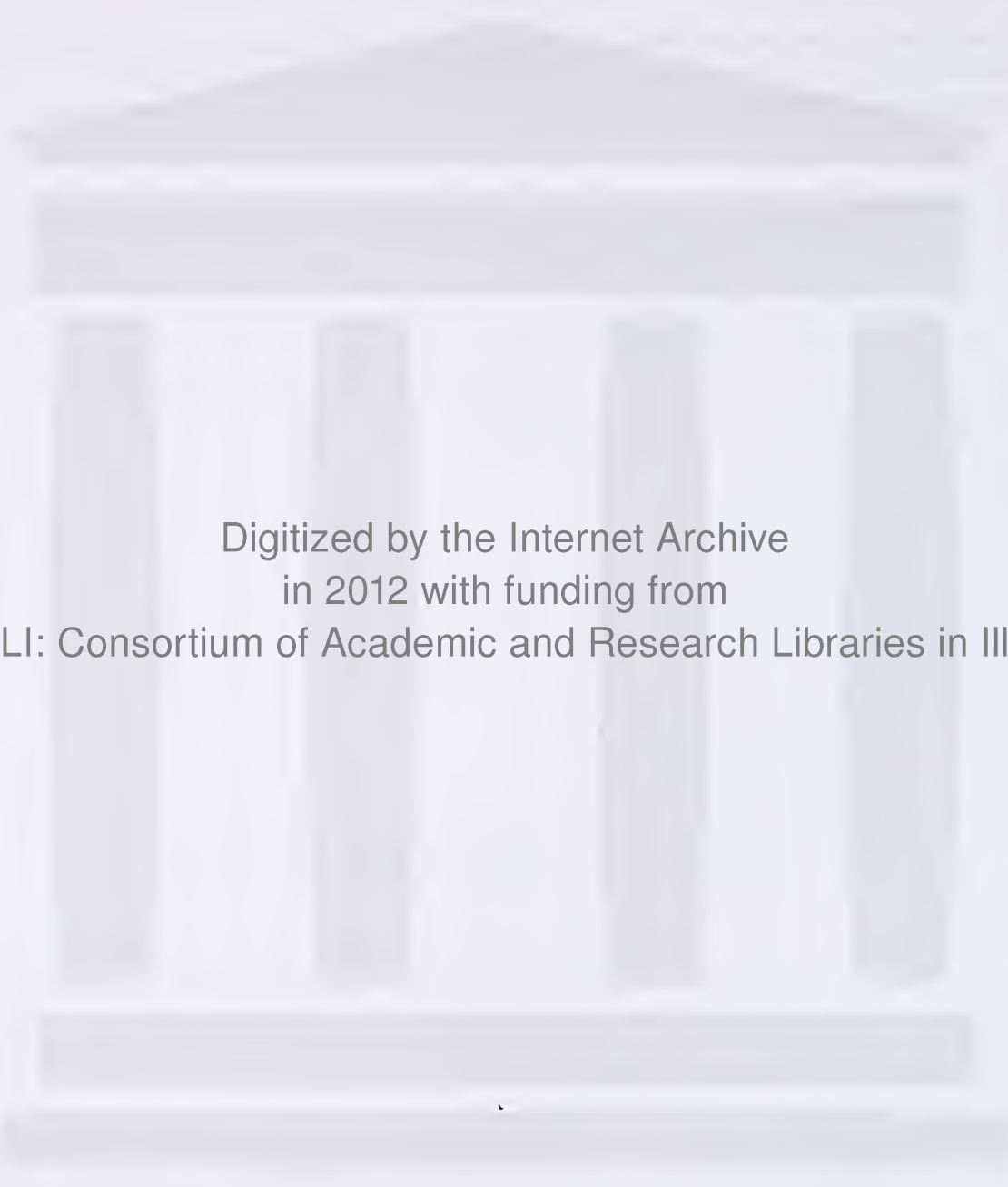
## Annual Report: 2008

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# JCAR

## Its Creation and Its Purpose

### Creation

The Illinois General Assembly created the Joint Committee on Administrative Rules (JCAR) in 1977 and delegated to it the responsibility of the legislative branch to ensure that the laws it enacts are appropriately implemented through administrative law. The specific duties and authorities of JCAR are outlined in the Illinois Administrative Procedure Act (IAPA), as is the Illinois rulemaking process.

### Responsibilities

The Committee's principal programs and activities include:

- *Review of general rulemaking.* In the course of this review, JCAR seeks to facilitate involvement by the affected public and to make the review process a timely and efficient one that assists State agencies in their goal of enacting the best administrative law possible.
- *Review of emergency and preemptory rulemakings* to ensure that they are justifiable within the IAPA's limitations on these types of rulemakings. Emergency and preemptory rulemakings are not subject to the IAPA's public comment period, and thus should be used conservatively.
- *Review of existing agency rules and policies* to determine if they have been properly promulgated, are unauthorized or unreasonable, or result in serious negative impact on the citizens of this State. These reviews can be undertaken upon JCAR's own initiative or in response to a complaint from the public.
- *Public Act review* to determine the necessity for new or amendatory rulemaking in response to legislative changes. JCAR devises a list of laws it believes may generate rulemaking activity, shares that list with the agencies, and monitors agency activity to determine if appropriate action is taken.
- *Legislative activities.* JCAR reviews any proposed legislation that amends the Illinois Administrative Procedure Act and brings to agencies' attention any resulting changes in rulemaking procedures. Legislation involving issues that have recently come before JCAR is also followed. Under its IAPA mandate to continually seek to improve the rulemaking process, JCAR occasionally initiates legislation revising the IAPA. It also may propose legislation when rules review brings attention to a statutory insufficiency or lack of clarity or to enforce its Objections or Recommendations when an agency has refused to adhere to those Objections or Recommendations.
- *Public information.* JCAR provides information on rules and the rulemaking process to legislators and the public through several conduits. First, JCAR publishes *The Flinn Report: Illinois Regulation*, a free weekly newsletter that summarizes State agency rulemaking activities. The newsletter is used by many as an alternative to subscribing (\$290/yr.) to the *Illinois Register* and is available on-line, as well as by mail. The newsletter highlights the major issues; the reader can then seek a copy of the specific rulemaking or further information from the proposing agency. Second, JCAR has created and maintains the *Illinois*

*Administrative Code* database. The database is used in the publishing of the *Illinois Register* by the Secretary of State's Index Department. State agencies can request materials from the database for use in drafting amendatory rulemakings. The database is also accessible on the General Assembly website ([www.ilga.gov](http://www.ilga.gov)). While emergency rules are not imbedded into the database, the database shows where emergency rules have been adopted and contains automatic links to the *Illinois Register* database, where the emergency rules can be viewed. Third, JCAR staff is always available to respond to inquiries from General Assembly members and the public. For information, or to be added to the *Flinn Report* mailing list, call 217/785-2254 or contact JCAR by e-mail at [jcar@ilga.gov](mailto:jcar@ilga.gov).

## **The Review Process** ---

The JCAR membership meets at least once each month to consider an agenda that generally includes from 50 to 100 separate rulemakings by State agencies. In a year's time, JCAR will review approximately 20,000 pages of rule. The IAPA dictates that the Committee's analysis of rulemakings be based on such concerns as statutory authority and legislative intent; necessity of the regulation; economic impact on State government and the affected public; completeness and appropriateness of standards to be relied upon in the exercise of agency discretion; effect on local government through the creation of a mandate; adherence to IAPA rulemaking requirements; and form.

JCAR's review of agency regulatory proposals is predominantly substantive. Its major concern is that statutory law is applied fairly and consistently, creating as little paperwork and economic burden for the affected public as possible. The Committee serves as the final avenue for input from the public before a rulemaking is formally adopted. Recommendations from the public are always welcome and are actively sought. The Committee recognizes that no one is as qualified to comment on the appropriateness and practicality of a proposed regulation as the individual whose activities or business practices will be affected by that regulation. Comment on any proposed or existing State regulation may be submitted to the Committee at 700 Stratton Building, Springfield IL 62706, or by calling 217/785-2254.

JCAR's perusal of agency rulemakings serves a technical purpose as well. The various rulemakings of the State agencies collectively comprise the *Illinois Administrative Code*. In giving a final technical review to each agency proposal, JCAR, along with the Secretary of State's Index Department, strives to achieve some degree of consistency among the individual agencies' portions of the *Code*, and to make the *Code* as readable and understandable for the public as possible.

## **Annual Report** ---

This Report includes narratives of JCAR activity during 2008, as well as the statistical summaries of the rulemaking activities of State agencies. The summary of legislation affecting JCAR reflects activity of the 2<sup>nd</sup> year of the 95<sup>th</sup> GA. This Report also includes an historical overview of rulemaking, pertinent historical statistics, and the most recent version of the Illinois Administrative Procedure Act.

# JCAR MEMBERSHIP

The Joint Committee on Administrative Rules consists of 12 legislators who are appointed by the General Assembly leadership. Membership is equally apportioned between the 2 houses and the 2 political parties. Two Co-chairs are selected as provided by law. The Co-chairs are not members of the same house or the same party.

## 2008 MEMBERS

---

Senator Maggie Crotty, Co-Chair  
Senator J. Bradley Burzynski  
Senator James F. Clayborne, Jr.  
Senator Randall Hultgren  
Senator Dan Rutherford  
Senator Ira Silverstein

Representative Brent Hassert, Co-Chair  
Representative John Fritchey  
Representative Lou Lang  
Representative David Leitch  
Representative David Miller  
Representative Rosemary Mulligan

## FORMER MEMBERS

---

Bill W. Balthis  
Allen Bennett  
Arthur L. Berman  
Bill Black  
Prescott E. Bloom  
Glen L. Bower  
Jack E. Bowers  
Woods Bowman  
John W. Countryman  
Mary Lou Cowlshaw  
Tom Cross  
John Cullerton  
Michael Curran  
Richard M. Daley  
Steve Davis  
Vince Demuzio  
Laura Donahue  
James H. Donnewald  
Thomas Dunn  
Jim Edgar  
Tom Ewing  
Beverly Fawell  
Monroe Flinn  
Barbara Giolitto  
James Gitz  
Alan J. Greiman

Kenneth Hall  
Charles Hartke  
Karen Hasara  
Carl E. Hawkinson  
Larry Hicks  
Manny Hoffmann  
Tom Holbrook  
Emil Jones, Jr.  
Jeremiah E. Joyce  
Douglas N. Kane  
Doris Karpel  
Richard Kelly, Jr.  
Bob Kustra  
Thaddeus "Ted" Lechowicz  
Larry Leonard  
Ellis Levin  
Richard Luft  
Lisa Madigan  
John W. Maitland, Jr.  
Lynn Martin  
John M. Matejek  
Roger McAuliffe  
Thomas J. McCracken, Jr.  
Sam McGrew  
Larry McKeon  
A. T. "Tom" McMaster

Jim Meyer  
Phil Novak  
Barack Obama  
William O'Daniel  
Myron J. Olson  
Coy Pugh  
Jim Rea  
Steve Rauschenberger  
David J. Regner  
Jim Reilly  
Philip J. Rock  
Tom Ryder  
George Sangmeister  
Frank D. Savickas  
John Sharp  
Todd Stroger  
Art Tenhouse  
Donne E. Trotter  
Sam Vinson  
Richard A. Walsh  
Larry Wennlund  
Robert C. Winchester  
Kathleen Wojcik  
Harry "Babe" Woodyard  
Larry Woolard  
Harry "Bus" Yourell





# Illinois Rulemaking Process

---

Law basically exists in 4 forms: constitutional law, statutory law, administrative law and case law. Constitutional law creates broad guidelines. Legislation creates specific restrictions, authorities and programs. Administrative law adds the detail often necessary to implement statutory law. If these 3 categories of law do not sufficiently address all the variables, case law evolves.

In 1975, the Illinois General Assembly enacted the Illinois Administrative Procedure Act (IAPA) [5 ILCS 100] to create a procedure through which administrative agencies would exercise the authority delegated to them by the legislature to create administrative law through the adoption of agency regulations. In 1977, the IAPA was amended to add a process by which the General Assembly would oversee the exercise of this delegated authority through the Joint Committee on Administrative Rules (JCAR), a service agency of the General Assembly.

Rules of an administrative agency are valid and enforceable only after they have been through the rulemaking process prescribed in the IAPA. Rules are for the purpose of interpreting or implementing provisions of a statute and should not actually expand or limit the scope of the statute.

## Types of Rulemakings

---

**Proposed Rules.** These can be new rules or amendatory rulemakings. Frequently this is referred to as "regular rulemaking" or "permanent rulemaking". A 2-step (First Notice and Second Notice) process is followed, requiring from 90-365 days. Aside from the basic 90 days, the agency controls the timing. Both the general public and the General Assembly, through JCAR, can have input prior to adoption.

**Emergency Rules.** Rules are effective immediately upon the agency filing them with the SOS or within 10 days after filing. These rules can be developed unilaterally by the agency; JCAR reviews after the rules are adopted. An emergency rulemaking lasts 150 days unless an earlier date is specified or the emergency rule is replaced by a permanent rulemaking. Emergency rulemaking can be used only if the agency finds a threat to the public interest, safety or welfare exists that the rulemaking will address.

**Peremptory Rules.** The IAPA provides for the immediate adoption of a rule required as a result of a federal law, federal rule, collective bargaining agreement, or a court order under conditions that preclude discretion by the agency concerning the rule's content. Peremptory rules are effective upon filing with the SOS or on the date required by the federal law, federal rule or court order. JCAR reviews these rules after their adoption.

**Exempt or Identical in Substance Rules.** The IAPA, the Environmental Protection Act and the Illinois Emergency Management Act create a special process through which PCB and IEMA can adopt regulations that are identical in substance to federal regulations that the State is required to adopt and enforce. These rulemakings are reviewed by JCAR after adoption.

**Required Rulemaking.** These are rules of an agency that can be adopted unilaterally by the agency by filing with the SOS. Examples are organization charts, principal address, Freedom of Information Act information, hearing officer qualifications, etc. JCAR reviews required rules after their adoption.

## **The Process** ---

**Drafting of Rules.** Administrative rules are drafted by State agencies; there is no central drafting bureau as for statutes. The involvement of the public in the initial drafting is at the discretion of the agency; however, the IAPA encourages early public involvement and requires agencies to semiannually publish a Regulatory Agenda indicating, to the best of the agency's knowledge, the scope of the next 6 months' rulemaking activity.

**First Notice.** The First Notice period commences upon publication of an agency's Notice of Rulemaking in the Illinois Register. First Notice lasts a minimum of 45 days and terminates when the agency files with JCAR, commencing the Second Notice period. The only limitation is that a rulemaking expires if not adopted within 1 year after commencement of First Notice.

The IAPA requires that, during First Notice, the Department of Commerce and Economic Opportunity review each proposed rulemaking to determine possible impact on small business. The general public can submit comment on the rulemaking proposal to the agency and a public hearing may or may not be held during this period. The agency can volunteer to hold a hearing or must conduct one at the request of the Governor, JCAR, an association representing over 100 persons, 25 individuals, or a local government. Requests for hearing must be filed within 14 days after publication of the First Notice. The agency can modify the rulemaking during First Notice by submitting a First Notice Changes document to JCAR when it gives Second Notice.

**Second Notice.** The Second Notice period commences upon the agency's filing of the Second Notice with JCAR and lasts for a maximum of 45 days, unless extended for an additional 45 days by mutual agreement of JCAR and the agency. During the Second Notice Period, legislative review of the rules is conducted first by the JCAR staff and then at a meeting of the legislative members. JCAR reviews the proposed rules for statutory authority, propriety, standards for the exercise of discretion, economic effects, clarity, procedural requirements, technical aspects, etc.

During the JCAR review, JCAR and the agency can agree to modifications in the rulemaking that are adopted through written JCAR Agreements. The Agreements are appended to the Certificate of No Objection issued by JCAR at its regular meeting, or are still applicable if no Certificate is issued but the agency proceeds to adopt. If the agency does not choose to modify a rulemaking or if policy differences cannot be resolved during the review process, JCAR can take one of several actions.

## **JCAR Motions** ---

**Certificate of No Objection.** With the Certificate, the agency can proceed to adopt the rules by filing them with the SOS for publication in the Illinois Register.



**Recommendation.** (Issued along with a Certificate of No Objection) The agency should respond to the Recommendation in writing within 90 days and can modify or withdraw the rule in response to a JCAR Recommendation. (After going to Second Notice, the agency cannot unilaterally modify/withdraw a rulemaking.) However, the agency can also adopt the rules with no changes at any time after receipt of the Certificate of No Objection.

**Objection.** An agency has to respond to an Objection in writing within 90 days, but after responding can proceed to adopt. The agency can modify or withdraw in response to a JCAR Objection or adopt the rules without changes. JCAR Agreements still apply.

**Filing Prohibition/Suspension.** If JCAR determines that a rulemaking constitutes a threat to the public interest, safety or welfare, the members can, by a 3/5 (8 members) vote, prohibit filing of a proposed rulemaking (or suspend an emergency or preemptory rule). As a result, the proposed rulemaking may not be accepted for filing by the Secretary of State or enforced by the agency. An emergency or preemptory rule, which has already been adopted, becomes null and void for a period of 180 days, after which, it is automatically repealed.

## **Public Notification** ---

**Illinois Register** is the official State publication through which the public is informed of rulemaking activity. The Illinois Register is prepared by JCAR and published by the Secretary of State every Friday and can be accessed through the General Assembly website ([www.ilga.gov](http://www.ilga.gov)) or the Secretary of State's website. The Register contains First Notice publication of rulemaking proposals, JCAR actions, a list of Second Notices received by JCAR, notices of final adoption of rulemakings, regulatory agendas (in January and July), executive orders and proclamations, and quarterly indexes to the current and previous issues. Over the course of a year, the Register contains around 20,000 pages. It can be ordered in hardcopy from the Secretary of State for \$290/year, can be seen on both the General Assembly's and the Secretary of State's websites, and is available electronically through private publishers.

**The Flinn Report: Illinois Regulation** is a 4-6 page weekly publication by JCAR that summarizes the rulemaking activity depicted in the matching issue of the Illinois Register. The Flinn Report is mailed free of charge to anyone who requests it and is also available weekly on the General Assembly's website at [www.ilga.gov](http://www.ilga.gov).

**Illinois Administrative Code.** The compilation of all agency rules is known as the Illinois Administrative Code. The Code, which is larger than the Illinois Compiled Statutes, is maintained electronically by JCAR/LIS. That database is located on the General Assembly's website at [ilga.gov](http://ilga.gov) and State agencies can request from JCAR downloads of specific Sections to use for drafting purposes.

## Public Participation ---

One of the main reasons the IAPA was enacted was to give the public input into the rulemaking process. Any interested persons may contact an agency during the First Notice period to record a position on a rulemaking proposal. Additionally, many agencies consult with their identified interest groups during the pre-First Notice drafting process.

When the rulemaking goes to Second Notice, JCAR receives a copy or summary of all written comment submitted to the agency. In addition, the public may contact JCAR directly, and frequently does so if the agency refused to modify in response to public comment, or if they discovered the existence of the proposal too late for the First Notice public comment period.

Public comment is vital to the JCAR review process. Frequently, it is only through this comment that the Committee fully recognizes the effect of a rule on the individual, business or local government that has to adhere to it on a daily basis.

The public may also lodge complaints about existing rules. Agencies are required to allow the public to suggest rule revisions. Additionally, JCAR may open an investigation into an existing rule on its own volition or based on public complaint.

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## **2008 Rulemaking**

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In 2008, JCAR reviewed 452 rulemakings, 359 of which were general rulemakings, 46 emergency rulemakings, 22 peremptory rulemakings, 14 exempt rulemakings and 11 required rulemakings. JCAR voted 4 Filing Prohibitions, 11 Objections and 9 Recommendations on general rulemakings; 2 Suspensions and 8 Objections on emergency rulemakings; and 4 Suspensions and 9 Objections on peremptory rulemakings. Also, 2 Objections and 2 Recommendations were voted on required rulemakings.

Some of the more notable rules on which JCAR took action are described here.

### **GENERAL RULEMAKING**

#### **SBE - SPECIAL EDUCATION FACILITIES UNDER SECTION 14-7.02 OF THE SCHOOL CODE**

The State Board of Education proposed requiring nonpublic and out-of-state providers of special education services to students with disabilities to maintain a written policy that use of behavioral intervention strategies relying on pain as an intentional method of control will not be applied to any student. (At its 6/08 meeting, JCAR objected to and suspended an identical emergency rulemaking because SBE had not shown the existence of any emergency situation. SBE agreed and repealed the rule.) At its 9/08 meeting, JCAR objected to and prohibited filing of this rulemaking because SBE was implementing a policy denying Illinois special education students State support for the education and training their IEP team has deemed most appropriate. The school district, IEP team and parents have the statutorily granted right and responsibility to devise the educational plans for these students based on the child's individual needs. JCAR determined that SBE's enforcement of this policy presented a threat to the public interest. SBE failed to respond to the Objection within 90 days and the rulemaking was, by operation of law, withdrawn.

#### **HFS - MEDICAL ASSISTANCE PROGRAMS**

The Department of Healthcare and Family Services proposed committing to total State funding of continued healthcare coverage (FamilyCare) for caretaker relatives of children covered under the State Childrens Health Insurance Program (SCHIP), which was funded under a federal waiver that expired 9/30/07. The proposed rule would also expand FamilyCare to adults with family income of up to 400% FPL (formerly 185%). At its 2/08 meeting, JCAR objected to and prohibited filing of the rulemaking to the extent that expanded medical assistance was provided to persons other than those formerly receiving medical coverage under the federal SCHIP waiver for caretaker relatives of children covered by SCHIP. As the budgetary impact on the State is likely to be significant, an expansion of that magnitude should not be initiated without a specific legislative determination that adequate financial resources are available. The General Assembly neither included expanded FamilyCare in the FY08 budget, nor passed specific statutory authority for such an expansion. Entering into such an expansion without the assurance of available funding and specific statutory authority is not in the public interest. HFS responded that it had statutory authority under 305 ILCS 5/5-2(2)(b) and sufficient resources to pay for the expansion within its FY08 budget. JCAR voted to issue a Notice of Failure to Remedy. At the 8/08 meeting, HFS was given the opportunity to withdraw the rulemaking; it refused. The filing prohibition became permanent 8/23/08.



## **DPH - SMOKE FREE ILLINOIS**

The Department of Public Health reflected the statutory prohibition against smoking in public places, public or private places of employment, and specified portions of student dormitories owned and operated or used by public or private institutions of higher education. At its 1/08 meeting, JCAR objected to and prohibited the filing of the rulemaking because it contained no process by which an accused violator could argue that no violation occurred, appeal a finding of a violation, or appeal the amount of the imposed fine. An alleged violator's only options would be to pay the fine or challenge enforcement action through the circuit court. Lack of due process threatens the public interest and welfare. Expecting further amendments to the Smoke Free Illinois Act, DPH responded that it would modify the rulemaking and submit the changes for JCAR review. However, no such legislation was passed. At the 6/08 meeting, DPH was given the opportunity to withdraw the rulemaking; it refused. The filing prohibition became permanent 7/6/08.

## **HFS - MEDICAL PAYMENT**

The Department of Healthcare and Family Services proposed covering routine examinations and preventive services for clients over age 21. At its 1/08 meeting, JCAR objected to and prohibited filing of the rulemaking because, given the Department's own estimate that the State would experience a shortfall of at least \$861 million in its ability to pay FY08 medical assistance claims, it was not in the public interest to further increase the State's financial obligations under medical assistance by, at this time, expanding the program to offer preventive care to adults. In response, HFS initially declared that it made 2 assumptions in concluding there would be no fiscal impact: preventative care would yield comparable savings on acute care, and patients who wanted check-ups were being seen and billed as complaint driven office visits. HFS priced the preventive visits the same as other office visits in order not to create an incentive to choose one over the other, with the goal being to get good billing data on preventive care. While HFS voiced these assumptions, it then projected an \$850,000 cost in the 1<sup>st</sup> year that may double in subsequent years. HFS maintained that, in the long run, savings resulting from decreased use of acute care services will offset preventive care expenditures. HFS also said the costs can be absorbed in the nearly \$1 billion physician line item in the budget without altering the payment cycle. HFS depicted the shortfall it earlier estimated, and that JCAR cited in its Objection, as not a shortfall but the normal carryover of fiscal year liability (lapse). JCAR voted to issue a Notice of Failure to Remedy. At the 6/08 meeting, HFS was given the opportunity to withdraw the rulemaking; it refused. The filing prohibition became permanent 7/6/08.

## **DFPR - SUPPLEMENTAL REPORTS FOR ACCIDENT AND HEALTH INSURERS**

The Department of Financial and Professional Regulation proposed that, starting 12/31/07, insurance companies report health benefit plan information (gross quarterly premium statements and enrollment data, along with direct losses incurred, the loss ratio experienced by the company, primary insured persons and dependents for insurance coverage). At its 10/07 meeting, JCAR objected to and prohibited filing of the rulemaking because DFPR lacked specific statutory authority to require the submission of quarterly reports of information such as CPT Codes, particularly with the aim of regulating the insurance marketplace and pricing, rather than examining the financial solvency of insurance carriers. DFPR disagreed with the Objection and Filing Prohibition, stating it was legally and factually unfounded. DOI cited 2 Sections of the Insurance Code, Section 136 (grants authority to seek data for purposes of examining the financial solvency of an insurance company) and Section 401 (rulemaking authority), as its authority to "seek all Part 937 data,

including quarterly reports". JCAR voted to issue a Notice of Failure to Remedy. The Filing Prohibition became permanent 4/6/08.

### **SBEL - AMENDMENTS TO VOTE TOTALS**

The State Board of Elections proposed prescribing a 30 day deadline for election authorities to submit any amendments to their official canvasses of vote totals submitted to SBEL and included in SBEL's official proclamation of candidates who have been elected. At its 12/07 meeting, JCAR objected because the Board lacked statutory authority to permit amended statements. The Election Code prescribes specific canvass procedures, but does not mention amendments. The Board did not cite any statutory basis for allowing amended results. If the Board wishes to establish a mechanism for correcting reported election results, it should seek statutory authority to do so. SBEL withdrew the rulemaking.

### **HFS - MEDICAL ASSISTANCE PROGRAMS**

The Department of Healthcare and Family Services proposed that individuals who fail to qualify for basic maintenance under the Aid to the Aged, Blind and Disabled program (AABD) on the basis of need because of excess income and/or assets become eligible for medical assistance if they pay, or a third party pays, to HFS their monthly Medicaid spenddown amount. At its 3/08 meeting, JCAR objected to HFS' lack of timeliness in proposing its rulemaking. PA 94-847, effective 1/1/07, specifically required implementation of the provisions articulated in this rulemaking by 7/1/07. HFS responded that it was not untimely because the program is subject to approval by the Centers for Medicare and Medicaid Services which has not been received. When asked why it arbitrarily chose the 3/2/08 meeting for initiating 2<sup>nd</sup> Notice on the rulemaking, HFS replied that it wanted to be ready when CMMS approves. Statute states: "No later than 7/1/07, subject to federal approval of a State Medicaid Plan amendment. . . ." The Department complied with neither the 7/1/07 statutory date, nor the CMMS approval date. JCAR took no further action.

### **SBEL - VOTER REGISTRATION**

The State Board of Elections proposed allowing election authorities, as an alternative to relying on certified copies of death certificates, to rely on published obituaries for purposes of purging deceased persons from their voter registration rolls. At its 9/08 meeting, JCAR objected because the Board lacks statutory authority to permit election authorities in counties having a population of 500,000 or more to cancel voters' registration based on an obituary listing. If the Board wants to implement federal recommendations that are broader than the provisions of the Election Code, it should first seek amendment of the Code. SBEL agreed with JCAR's action and says it plans to withdraw the rulemaking and seek statutory authority.

### **SBI - STATE EMPLOYEES' DEFERRED COMPENSATION PLAN**

The State Board of Investment proposed revamping the rules governing administration of the Deferred Compensation Plan. At its 10/08 meeting, JCAR objected because the rule lacks standards governing how the Board will select investment options. The Illinois Pension Code states investments utilized under the Plan must be reviewed and selected based on competitive bidding processes reflecting specifications and considerations the Board deems appropriate. It needs to establish these specifications and considerations in rule to avoid enforcement of policy not in rule in violation of the IAPA. SBI stated that it would withdraw the



rulemaking and, after further consultation with affected parties, pursue future rulemaking by 4/19/09 addressing its standards governing selection of investment vehicles and other updates to existing rule, and that it would consider possible statutory amendments clarifying SBI and CMS roles in administering deferred compensation. SBI also agreed to hold full and responsive rulemaking hearings in compliance with the IAPA. SBI withdrew the rulemaking 11/21/08.

#### **DCFS - OFFICE OF THE INSPECTOR GENERAL**

The Department of Children and Family Services proposed allowing the DCFS Office of the Inspector General (OIG) to share confidential information with law enforcement entities when referring cases for possible criminal investigation or prosecution, when conducting joint investigations with law enforcement, or pursuant to an intergovernmental agreement. The law enforcement entity cannot redisclose the information without seeking a protective order. At its 11/08 meeting, JCAR objected because the rulemaking exceeds the Department's statutory authority under the Children and Family Services Act by allowing the Inspector General to share confidential information with a variety of law enforcement entities. Statute authorizes the sharing of this information only with the Department of State Police. If DCFS believes this expansion in the OIG's authority to share information with law enforcement is warranted, it should first seek a change in the statute. DCFS has yet to respond.

#### **DOA - HALAL FOOD DISCLOSURE**

The Department of Agriculture proposed setting up procedures governing disclosure statements about and registration of dealers in halal foods (a method of preparing food and maintaining strict compliance with the laws and customs of the Islamic religion). At its 11/07 meeting, JCAR recommended that DOA initiate rulemaking to implement Public Acts in a more timely manner. The rulemaking was proposed in February 2007, more than 5 years after the effective date of the Public Act requiring the rules (PA 92-394). DOA agreed and will strive to be more timely in updating its rules to implement Public Acts.

#### **DOR - LOTTERY (GENERAL)**

The Department of Revenue proposed establishing a voluntary self-exclusion program for individuals who wish to reduce their incentive to purchase Illinois Lottery tickets. At its 5/08 meeting, JCAR recommended that the Department of Revenue refrain from implementing policy not in rule. The Illinois Lottery has been operating a self-exclusion program since October 2007 without statutorily required rules. The Department pledged to initiate required rulemaking prior to implementing policy, in the future.

#### **ICC - ELECTRIC INTERCONNECTION OF DISTRIBUTED GENERATION FACILITIES**

The Illinois Commerce Commission proposed setting standards for the equipment to be used by retail customers utilizing net metering to interconnect with the electric power grid. At its 7/08 meeting, JCAR recommended that ICC consider amending the rulemaking to require external electric distribution companies to track their use of disconnect switches and to provide results to the Commission on a monthly basis. ICC responded that, while it could not make the change at this time, it intends to revisit the issue in the future to allow all interested parties to develop supportive or contrary positions on the record.



## **SBE - SECONDARY AGRICULTURAL EDUCATION**

At its 11/08 meeting, JCARE recommended that the State Board of Education adopt rules implementing PA 94-855, effective 1/1/07, which amended Section 2-3.80 of the School Code affecting school districts offering secondary agricultural education programs. While SBE has proposed a rulemaking implementing PA 95-153 concerning agriculture science teacher education programs, it has not adopted rules implementing PA 94-855. That PA requires that school districts offering secondary agricultural education programs approved by SBE for State and federal funding ensure those programs provide SBE-approved courses, be affiliated with a State/national FFA chapter integral to instruction and not just as an extracurricular activity, and provide a mechanism for involving students in formal, supervised, agricultural-experience activities and programs. In response to JCARE's Public Act Review, SBE stated that it intended to adopt rules implementing PA 94-855, but has not yet done so.

**2008**  
**GENERAL RULEMAKINGS**  
**PROPOSED BY THE AGENCY**

AGENCY	NUMBER OF RULEMAKINGS
Department of Agriculture	3
Department on Aging	2
Auditor General	2
Department of Central Management Services	10
Department of Children and Family Services	7
Department of Commerce and Economic Opportunity	4
Commerce Commission	8
Community College Board	1
Council on Developmental Disabilities	2
Court of Claims	1
Deaf and Hard of Hearing Commission	1
Drycleaner Environmental Response Trust Fund Council	1
State Board of Education	24
State Board of Elections	1
Elevator Safety Review Board	2
Emergency Management Agency	12
Department of Employment Security	14
Environmental Protection Agency	5
Department of Financial and Professional Regulation	25
State Fire Marshal	8
Gaming Board	6
Green Government Coordinating Council	2
Health Facilities Planning Board	4
Department of Healthcare and Family Services	27
Board of Higher Education	2
Housing Development Authority	1
Department of Human Rights	5
Human Rights Commission	2
Department of Human Services	19
State Board of Investment	1
Department of Labor	2
Law Enforcement Training and Standards Board	1

Lieutenant Governor	1
Liquor Control Commission	1
Department of Natural Resources	26
Pollution Control Board	8
Property Tax Appeal Board	1
Department of Public Health	20
CPO for Public Institutions of Higher Education	1
Racing Board	20
Department of Revenue	33
Secretary of State	20
Sex Offenders Management Board	2
State Universities Civil Service System	1
State Universities Retirement System	1
Student Assistance Commission	9
Teachers' Retirement System	4
Department of Transportation	38

<b>TOTAL</b>	<b>391</b>
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**2008  
GENERAL RULEMAKINGS  
CONSIDERED BY JCAR**

AGENCY	NUMBER OF RULEMAKINGS
Department of Agriculture	4
Auditor General	1
Department of Central Management Services	6
Department of Children and Family Services	9
Department of Commerce and Economic Opportunity	4
Commerce Commission	10
Community College Board	1
Council on Developmental Disabilities	3
Court of Claims	1
Drycleaner Environmental Response Trust Fund Council	1
State Board of Education	21
State Board of Elections	2
Elevator Safety Review Board	1
Emergency Management Agency	4
Department of Employment Security	6
Environmental Protection Agency	1
Executive Ethics Commission	1
Department of Financial and Professional Regulation	23
State Fire Marshal	9
Gaming Board	9
Green Government Coordinating Council	2
Health Facilities Planning Board	4
Department of Healthcare and Family Services	23
Board of Higher Education	2
Higher Education Travel Control Board	1
Housing Development Authority	1
Department of Human Rights	4
Department of Human Services	25
State Board of Investment	1
Department of Labor	2
Law Enforcement Training and Standards Board	2
Liquor Control Commission	1
Department of Natural Resources	26

Pollution Control Board	8
Property Tax Appeal Board	1
Department of Public Health	19
CPO for Public Institutions of Higher Education	1
Racing Board	14
Department of Revenue	32
Secretary of State	18
State Employees Retirement System	1
State Records Commission	1
State Universities Civil Service System	1
State Universities Retirement System	1
Student Assistance Commission	9
Teachers' Retirement System	4
Department of Transportation	38

<b>TOTAL</b>	<b>359</b>
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**2008**  
**GENERAL RULEMAKINGS:**  
**JCAR ACTION**

AGENCY	REC	OBJ	PROHIBIT
Department of Central Management Services	1	1	
Department of Children and Family Services	1	2	
Commerce Commission	1		
State Board of Education	1	2	1
State Board of Elections		1	
Department of Healthcare and Family Services		3	2
Board of Higher Education	2		
State Board of Investment		1	
Department of Natural Resources	1		
Department of Public Health	1	1	1
Department of Revenue (Lottery)	1		
<b>TOTALS</b>	<b>9</b>	<b>11</b>	<b>4</b>



**2008**  
**GENERAL RULEMAKINGS:**  
**BASIS FOR JCAR ACTION**

<b>Basis for Objection</b>	<b>Number of Objections</b>	<b>Percentage of Total</b>
Incomplete Rulemaking	4	40%
Economic Impact	1	10%
Statutory Authority/Legislative Intent/Economic Impact	1	10%
More Timely Rulemaking	1	10%
Statutory Authority	3	30%
<b>TOTAL</b>	<b>10</b>	<b>100%</b>

<b>Basis for Recommendation</b>	<b>Number of Recommendations</b>	<b>Percentage of Total</b>
More Timely Rulemaking	7	78%
Incomplete Rulemaking	1	11%
Further Rulemaking	1	11%
<b>TOTAL</b>	<b>9</b>	<b>100%</b>

<b>Basis for Filing Prohibition</b>	<b>Number of Filing Prohibitions</b>	<b>Percentage of Total</b>
Incomplete Rulemaking	1	25%
Economic Impact	1	25%
Statutory Authority/Legislative Intent/Economic Impact	1	25%
Statutory Authority	1	25%
<b>TOTAL</b>	<b>4</b>	<b>100%</b>

## **EMERGENCY RULEMAKING**

Section 5-45 of the Illinois Administrative Procedure Act specifies that agencies may use this short form rulemaking procedure, in which a rule is adopted without prior opportunity for public and JCAR comment, only if the agency finds that an emergency exists that requires the adoption of a rule within fewer days than normally required. The agency must state the emergency situation in writing and make an effort to notify the affected public. An emergency rule becomes effective immediately upon filing with the Secretary of State or at a stated date less than 10 days after filing and is effective for up to 150 days, after which a general rulemaking has to be adopted if the policy is to continue. No emergency rule may be adopted more than once in any 24-month period.

### **HFS - MEDICAL ASSISTANCE PROGRAMS**

The Department of Healthcare and Family Services expanded FamilyCare in 2 ways. First, eligibility for medical assistance was expanded to caretaker relatives of children receiving medical assistance with incomes of up to 400% of the Federal Poverty Level. Second, coverage was picked up for persons who had been receiving State Children's Health Insurance Program (SCHIP) funds under a federal waiver that expired 9/30/07. At its 11/07 meeting, JCAR objected to and suspended the rulemaking because, contrary to Section 5-45 of the IAPA, no emergency situation existed that warranted adoption of the entire emergency rule. The agency maintained that the loss of the federal SCHIP waiver warranted the adoption of an emergency rule to continue coverage of adults served under that waiver. However, the rule was not limited to that issue. It contained other provisions that JCAR did not recognize as an emergency situation. JCAR recommended that HFS adopt a rule that addresses only the loss of the SCHIP waiver. The Committee found that inclusion of policy within the rule that does not address a valid emergency was not in the public interest. HFS did not respond to JCAR's actions. Under the IAPA and JCAR's operational rules, an agency's failure to respond to a JCAR Objection within 90 days constitutes a refusal to amend or repeal the emergency rule. JCAR voted to issue a Notice of Failure to Remedy. The emergency rule was repealed by operation of law 4/4/08.

### **HFS - REIMBURSEMENT FOR NURSING COSTS FOR GERIATRIC FACILITIES**

The Department of Healthcare and Family Services retooled the Minimum Data Set reimbursement methodology, setting new rates, variables to consider when administering care, and recordkeeping requirements. At its 2/13/08 meeting, JCAR objected to and suspended the rulemaking because no emergency existed. On 2/26/08 JCAR withdrew in part its Suspension on this rulemaking so that the portions of the rulemaking implementing a statutorily authorized rate increase could go into effect. A few references to the relevant rule text were omitted from that motion and, at its 3/08 meeting, JCAR withdrew the Suspension for those portions of the rule. Adoption of this policy through an emergency rule circumvented the public comment period and was not in the public interest. HFS failed to respond, which, under statute, constitutes refusal to amend or repeal the rule. On 5/29/08, HFS filed the permanent rulemaking for adoption, including the portions still suspended under the emergency rule. SOS staff accepted the filing from HFS. The IAPA states: During the 180-day period (of the

Suspension), the agency may not file, and the Secretary of State may not accept for filing, any rule that (i) has the same purpose and effect as rules or portions of rules suspended or (ii) does not substantially address the basis for the Suspension. The Suspension sunset 8/10/08. To allow the suspended policies of the emergency rule to be filed as permanent rule, JCAR withdrew the remaining portions of the Suspension at its 6/08 meeting and issued a Notice of Failure to Remedy based on HFS' failure to respond to the Objection by the 5/18/08 statutory deadline.

## **SBE - SPECIAL EDUCATION FACILITIES UNDER SECTION 14-7.02 OF THE SCHOOL CODE**

The State Board of Education required nonpublic and out-of-state providers of special education services to students with disabilities to maintain a written policy that use of behavioral intervention strategies relying on pain as an intentional method of control will not be applied to any student. At its 6/08 meeting, JCAR objected to and suspended the rulemaking because SBE had not shown the existence of any emergency situation. It was not likely that the Board would remove approval of any facility based on the changes in policy made by the emergency rules until the 2008-09 approval cycle, allowing sufficient opportunity to use the proposed rulemaking process. This unnecessary use of emergency rulemaking constituted a threat to the public interest. SB agreed that the emergency rulemaking proved unnecessary and offered to repeal it immediately, which would clear the way for JCAR to review the regular rulemaking. At its 8/08 meeting, JCAR withdrew the Suspension effective on the date of SBE's emergency repeal of the emergency rules. At its 9/08 meeting, JCAR objected to, and prohibited the filing of the identical permanent rulemaking.

## **HFS - HOSPITAL SERVICES; HOSPITAL REIMBURSEMENT CHANGES**

The Department of Healthcare and Family Services adopted 2 rulemakings: (1) making the care of children from age 6 to 18 eligible for outlier payments, provided the care was performed at a hospital exclusively devoted to children and (2) slowing the growth in outlier payments for DRG reimbursements by increasing on 1/1/08 the factor (from 1.47 to 1.64) by which the fixed cost threshold is multiplied before outlier payments must be made and for non-DRG (per diem) rates, decreasing the factor (from 0.18 to 0.17) by which excess cost is multiplied to determine the outlier payment. At its 2/08 meeting, JCAR objected to this use of emergency rulemaking. PA 95-311 gives HFS extraordinary emergency rulemaking powers only with regard to amendments to the State Medical Assistance Plan. There is no federal match for outlier adjustment payments, so no State Plan amendment will be involved, nor had HFS made a case for this being an emergency situation under Section 5-45 of the IAPA. HFS published a public notice in 11/07 that it was going to be making changes to the outlier rate, but did not annualize the savings as required by 42 CFR 447.205. HFS pointed out correctly that it did annualize the savings on the emergency and proposed Notice Pages published in the Illinois Register and maintained that publication meets the requirement of the CFR. 42 CFR 447.205, however, requires that the notice be published before the rate change takes effect. As the emergency rule took effect 1/1/08 and Register publication wasn't until 1/11/08, the agency was incorrect in its statement that it met the federal requirement. JCAR determined that, while the agency's response did nothing to mitigate the cause of the Objection, these were procedural Objections, so no

further action was warranted.

## **SOS - DEPARTMENT OF PERSONNEL**

The Secretary of State adopted a comprehensive update and revision of its personnel rules. At its 3/08 meeting, JCAR objected to SOS using emergency rulemaking because there was no situation meeting the criteria for an emergency rulemaking under the IAPA. The personnel policies being revised or updated embraced statutory changes long known to the Secretary, some as far back as 1991. Any emergency situation that existed was agency created. SOS acknowledged its error and repealed the emergency rule effective 4/2/08.



**2008**  
**EMERGENCY RULEMAKINGS**  
**ADOPTED BY THE AGENCY**

AGENCY	NUMBER OF RULEMAKINGS
Department on Aging	1
Department of Agriculture	1
Department of Central Management Services	2
Department of Commerce and Community Affairs	2
Commerce Commission	2
State Board of Education	4
Department of Financial and Professional Regulation	2
State Fire Marshal	1
Green Government Coordinating Council	2
Department of Healthcare and Family Services	12
Housing Development Authority	1
Department of Human Services	3
Department of Labor	1
Department of Natural Resources	1
Department of Public Health	2
Racing Board	2
Department of Revenue	2
Secretary of State	5
<b>TOTAL</b>	<b>46</b>

**2008**  
**EMERGENCY RULEMAKINGS**  
**CONSIDERED BY JCAR**

AGENCY	NUMBER OF RULEMAKINGS
Department on Aging	1
Department of Agriculture	1
Department of Commerce and Community Affairs	2
Commerce Commission	2
State Board of Education	3
Department of Financial and Professional Regulation	3
State Fire Marshal	1
Green Government Coordinating Council	2
Department of Healthcare and Family Services	12
Housing Development Authority	1
Department of Human Services	3
Department of Labor	1
Department of Natural Resources	3
Department of Public Health	2
Racing Board	2
Department of Revenue	2
Secretary of State	5
<b>TOTAL</b>	<b>46</b>



**2008**  
**EMERGENCY RULEMAKINGS:**  
**JCAR ACTION**

AGENCY	REC	OBJ	SUSPENSION
State Board of Education		1	1
Department of Healthcare and Family Services		4	1
Department of Public Health		2	
Secretary of State		1	
<b>TOTALS</b>	<b>0</b>	<b>8</b>	<b>2</b>

**2008**  
**EMERGENCY RULEMAKINGS:**  
**BASIS FOR JCAR ACTION**

<b>Basis for Objection</b>	<b>Number of Objections</b>	<b>Percentage of Total</b>
Invalid Use of Emergency Rulemaking	6	67%
Statutory Authority	1	11%
More Timely Rulemaking	2	22%
<b>TOTAL</b>	<b>9</b>	<b>100%</b>

<b>Basis for Recommendation</b>	<b>Number of Recommendations</b>	<b>Percentage of Total</b>
Narrow Scope of Rulemaking	1	100%
<b>TOTAL</b>	<b>1</b>	<b>100%</b>

<b>Basis for Suspension</b>	<b>Number of Suspensions</b>	<b>Percentage of Total</b>
Invalid Use of Emergency Rulemaking	2	100%
<b>TOTAL</b>	<b>2</b>	<b>100%</b>

## **PEREMPTORY & EXEMPT RULEMAKINGS**

Section 5-50 of the Administrative Procedure Act specifies that agencies may use this short form of rulemaking procedure, in which the rule is adopted without prior opportunity for public and JCAR comment, only if the rulemaking is required by federal law, federal regulations, court orders or collective bargaining agreements and if the agency cannot exercise any discretion with respect to the rule content. Agencies must file the peremptory rule with the Secretary of State within 30 days after the change in rules is required.

Exempt rulemaking is a specialized form of rulemaking, similar to the peremptory rulemaking process, reserved for use by the Pollution Control Board (PCB) under the Environmental Protection Act and by the Emergency Management Agency (IEMA) under the Radiation Protection Act. PCB and IEMA can use this short form procedure only to adopt Illinois regulations that are "identical in substance" to mandated federal regulations.

### **HFS - MEDICAL ASSISTANCE PROGRAMS**

The Department of Healthcare and Family Services responded to the 4/15/08 Memorandum Opinion and Order issued by the Cook County Circuit Court, Chancery Division in the case of Caro v. Blagojevich by adopting a peremptory rule requiring individuals in the FamilyCare expansion program to search for work or be in a training/vocational program. At its 5/08 meeting, JCAR objected to and suspended the rulemaking because that use of peremptory rulemaking violates Section 5-50 of the IAPA that allows peremptory rulemaking to be used only when rulemaking is required as a result of federal law, federal rules and regulations, an order of a court or a collective bargaining agreement that precludes the exercise of agency discretion as to the content of the rule and that precludes adoption of rules through regular rulemaking. The analysis portion of the court's Memorandum Opinion and Order entered in Caro v. Blagojevich, which HFS cited as the reason for this peremptory rulemaking, noted that not all TANF requirements are met by the expanded FamilyCare Program emergency rules, specifically the requirement that adults in the household be employed or engaged in a job search. However, the judge's specific order on 4/15/08 preliminarily enjoined HFS from "enforcing the Emergency Rules or expending any public funds related to the FamilyCare Program created by the Emergency Rule". The court order did not direct HFS to amend its rules in any way, nor did the court set any deadline for action that precluded the use of regular rulemaking procedures. Therefore, the standards under Section 5-50 of the IAPA for use of peremptory rulemaking were not met, and JCAR found this violation of the IAPA presented a threat to the public interest. HFS failed to respond to the Objection; JCAR voted to issue a Notice of Failure to Remedy. The Suspension became permanent 11/16/08.

### **HFS - MEDICAL PAYMENT**

The Department of Healthcare and Family Services implemented a federal law requiring all non-electronic prescriptions to be written on tamper-resistant prescription forms in order to be eligible for reimbursement under Medicaid. If HFS determines that the brand name product is more cost effective than the generic, HFS will reimburse at the brand name rate. At its 5/08 meeting, JCAR objected to

and suspended the rulemaking because this use of peremptory rulemaking violates Section 5-50 of the IAPA that allows peremptory rulemaking to be used when rulemaking is required as a result of federal law that precludes the exercise of agency discretion as to the content of the rule and that precludes use of general rulemaking procedures. Both the underlying federal statute and the guidance document issued by CMMS in August 2007 allow for state discretion in regulating the use of tamper-resistant prescription forms. Additionally, since the agency had known since 9/29/07 that it had until 3/31/08 to implement this program, it had the opportunity to do so through the regular rulemaking process. The peremptory rule's inclusion of provisions not related to the federal action doubly violated peremptory rulemaking authority. JCAR found that this unauthorized use of peremptory rulemaking presented a threat to the public interest. HFS did not respond to the Objection and JCAR voted to issue a Failure to Remedy at the 9/08 meeting. On 11/12/08, JCAR withdrew the Suspension contingent on repeal of the peremptory. HFS adopted an emergency repeal of the peremptory on 11/12/08 and proposed a permanent rulemaking identical to the peremptory at the same time.

## **DHS - FOOD STAMPS**

The Department of Human Services increased the Food Stamp net monthly income standard, gross monthly income standard, monthly benefit amounts, shelter deductions and standard deduction amounts; removed cap on dependent care deductions for children and household members; removed obsolete references to Food Stamp coupons; and exempted certain retirement funds as assets for purposes of Food Stamp eligibility. At its 11/08 meeting, JCAR objected to DHS' use of peremptory rulemaking because the 10/1/08 peremptory rulemaking included federal provisions effective 6/18/08. This violates the IAPA requirement that adoption of federal changes by peremptory rule occur within 30 days after the federal action. JCAR found that this unauthorized use of peremptory rulemaking presented a threat to the public interest. DHS agreed to adopt an emergency repeal of the peremptory amendments if JCAR would lift its Suspension. DHS agreed to make every attempt to adhere to IAPA peremptory requirements in the future. These were federal requirements that DHS needed to reflect, but it couldn't do so, even using appropriate rulemaking procedures, as long as the Suspension was in place. JCAR withdrew its Suspension contingent upon DHS filing an emergency repeal of these peremptory amendments. The withdrawal was effective when the emergency repeal was filed. As of 1/26/09, DHS had not yet filed the repealer.

## **HFS - MEDICAL ASSISTANCE PROGRAMS**

The Department of Healthcare and Family Services responded to the 9/26/08 Memorandum Opinion and Order issued by the Illinois Appellate Court in the case of Caro v. Blagojevich by requiring individuals in the FamilyCare expansion program to search for work or be in a training/vocational program, to be determined ineligible if found guilty of a 2<sup>nd</sup> conviction for public aid fraud, and to comply with child support obligations. At its 11/08 meeting, because HFS' use of peremptory rulemaking violated the IAPA and presented a threat to the public interest, JCAR objected to and suspended the peremptory rule. Section 5-50 of the IAPA allows peremptory rulemaking to be used "when rulemaking is required as a result of...an order of a court...that precludes compliance with the general rulemaking requirements...and that precludes the exercise of discretion by the agency as to the content of the rule". In adopting this peremptory rule, HFS relied on the Opinion of the Appellate Court Fifth Division affirming the judgment of the trial court in Caro v. Blagojevich. First, while the Appellate



Court discussed the deficiencies in the emergency rule adopted by HFS and suspended by JCAR, it did not issue any order requiring HFS to adopt additional rule text without discretion, nor did the Appellate Court set any deadline for action that precluded the use of general rulemaking. Second, on 5/20/08, JCAR suspended an earlier peremptory rule adopted by HFS in response to circuit court action in Caro. On 11/16/08, the 180 day period during which the General Assembly or JCAR could withdraw that Suspension expired, making the Suspension permanent. Portions of this peremptory rule were identical to that suspended peremptory rule. Section 5-125 of the IAPA states that "the agency may not enforce, or invoke for any reason, a rule or portion of a rule that has been suspended". Therefore, adoption of the peremptory rule also violated Section 5-125 of the IAPA. HFS has yet to respond; the Suspension will become permanent on 5/17/09.

#### **DHS - TANF, AABD, GA, REFUGEE/REPATRIATE AND FOOD STAMPS**

The Department of Human Services expanded the non-citizens eligible for Temporary Assistance for Needy Family, Aid to the Aged, Blind or Disabled, General Assistance, Refugee/Repatriate and FS benefits to include Afghani and Iraqi immigrants. At its 12/08 meeting, JCAR objected because the 11/10/08 filing of peremptory rules implemented federal law effective 12/26/07 and 1/28/08. This violated the IAPA requirement that adoption of federal changes by peremptory rule occur within 30 days after the federal action. DHS has yet to respond.



**2008**  
**PEREMPTORY & EXEMPT RULEMAKINGS**  
**ADOPTED BY THE AGENCY**

AGENCY	NUMBER OF RULEMAKINGS
Department of Agriculture	2
Department of Central Management Services	10
Emergency Management Agency	2
Department fo Healthcare and Family Services	3
Department of Human Services	6
Pollution Control Board	20
TOTAL	43

**2008**  
**PEREMPTORY & EXEMPT RULEMAKINGS**  
**CONSIDERED BY JCAR**

AGENCY	NUMBER OF RULEMAKINGS
Department of Agriculture	3
Department of Central Management Services	10
Emergency Management Agency	2
Department of Healthcare and Family Services	3
Department of Human Services	6
Pollution Control Board	12
<b>TOTAL</b>	<b>36</b>

**2008**  
**PEREMPTORY & EXEMPT RULEMAKINGS:**  
**JCAR ACTION**

AGENCY	REC	OBJ	SUSPENSION
Department of Healthcare and Family Services		3	3
Department of Human Services		6	1
<b>TOTAL</b>	<b>0</b>	<b>9</b>	<b>4</b>

**2008**  
**PEREMPTORY & EXEMPT RULEMAKINGS:**  
**BASIS FOR JCAR ACTION**

Basis for Objection	Number of Objections	Percentage of Total
Invalid Use of Peremptory Rulemaking	9	100%
<b>TOTAL</b>	<b>9</b>	<b>100%</b>

Basis for Recommendation	Number of Recommendations	Percentage of Total
None		
<b>TOTAL</b>	<b>0</b>	<b>0%</b>

Basis for Suspension	Number of Suspensions	Percentage of Total
Invalid Use of Peremptory Rulemaking	4	100%
<b>TOTAL</b>	<b>4</b>	<b>100%</b>

## **REQUIRED RULEMAKING**

Section 5-15 of the Illinois Administrative Procedure Act requires that each agency maintain as rules certain types of basic information about the agency and its rulemaking process. For example, the agency must include a description of its organizational structure; procedures by which the public can obtain information concerning the agency's programs, including Freedom of Information Act (FOIA) procedures; and a current description of the agency's rulemaking procedures and research tools for its body of rules. An agency may also adopt rules that incorporate material by reference and adopt rules that specify the qualifications of administrative law judges by using the required rulemaking process. Section 5-15 authorizes agencies to by-pass the proposed rulemaking process and file a certified copy of a required rule with the Secretary of State for publication in the Illinois Register as an adopted rulemaking. JCAR reviews such rules after, rather than before, they are adopted.

### **ICC - ACCESS TO INFORMATION**

The Illinois Commerce Commission adopted a rulemaking implementing a Public Act governing the manner in which persons may address ICC. At its 2/08 meeting, JCAR objected because the rulemaking had insufficient standards governing the Commission's use of discretion in denying or granting requests to speak, in violation of Section 5-20 of the IAPA. ICC responded that it was willing to work with JCAR to develop mutually acceptable standards for the denying or granting of requests to speak at ICC meetings.

### **VPA - PUBLIC INFORMATION, RULEMAKING AND ORGANIZATION**

The Violence Prevention Authority adopted organizational rules defining: agency structure (membership, terms of office, etc.); rulemaking procedures (will do only these organizational rules); and the manner in which information will be made available to the public (requests for information, inspecting/copying public records). At its 5/08 meeting, JCAR objected because the rules would apparently lead to the VPA following policy not in rule. One Section of the rulemaking stated that VPA's rulemaking authority is limited to a description of the organization, procedures for handling public information requests, and a description of its procedures for adopting and amending these required organizational rules. JCAR did not agree. The IAPA establishes rulemaking responsibilities for all State agencies as defined in that Act, which includes statutorily created Authorities. Under the Violence Prevention Act of 1995, VPA allocates funds and makes grants to community and statewide organizations. If it fails to adopt rules governing application procedures, award criteria, etc., VPA would be disregarding the IAPA requirement that policy affecting an entity outside the agency be adopted and implemented through rules. Further, if VPA is exercising any discretion in disbursing these funds, such as denying any applicant or varying the amount of grants, Section 5-20 of the IAPA requires agency rules to establish standards by which the agency exercises its discretionary powers. Finally, the rule states that the requestor will be notified concerning the cost of copying records, which again suggests the agency intends to enforce policy not in rule. Fees being charged by an agency should be stated in rule. JCAR also recommended that VPA propose rules within the next 3 months that set out standards and proce-



dures for awarding Authority grants. VPA responded that it believes it has no statutory authority to adopt rules governing the awarding of grants because its enabling Act is silent as to any authority to make rules. Although the IAPA contains specific grants of authority with respect to procedures and requirements relating to rulemaking and hearings, according to VPA, it contains no express grant of general rulemaking authority to agencies within its scope. VPA referenced legislative history it believes makes it clear that the IAPA was intended to impose uniform procedures with respect to the adoption and availability of rules by agencies that had a source of rulemaking authority elsewhere and not as a grant of substantive rulemaking authority. ■ Although VPA agreed that the IAPA requires rules to establish standards by which the agency exercises its discretionary powers, it believes that statute requires standards in rules that implement discretionary powers, but that it does not grant the power to adopt discretionary rules. ■ VPA requested an Attorney General opinion with respect to the question of its authority to adopt rules governing its grant procedure. Should the AG advise that VPA has the authority to make such rules, it will do so. If the AG agrees that VPA has no authority to make grant rules or if JCAR recommends that VPA seek legislation to authorize such rulemaking, VPA would be willing to do so. VPA responded that it recognized that it has certain duties and responsibilities under the Grant Funds Recovery Act, including the power to recover misspent grant funds only after affording the grantee an opportunity for a hearing and judicial review of any recovery order issued thereafter. It appears that a recovery proceeding would, therefore, be a contested case and that VPA should have the rules of practice and procedure required by the IAPA. VPA will amend its rules to eliminate the statement that it will adopt only organizational rule and will promulgate rules of practice and procedure. ■ VPA has never charged fees for copies. It will amend the rule to delete the reference to cost. If VPA ever sets fees, it will amend the Part accordingly. JCAR voted to issue a Notice of Failure to Remedy, contending that, ever since the Illinois Supreme Court ruled in *Senn Park Nursing Center v. Miller* in the early 1980's that an agency's policies are invalid if not adopted through rule, JCAR has vigilantly sought to protect the public against policy not in rule.

2008  
**REQUIRED RULEMAKINGS  
CONSIDERED BY JCAR**

AGENCY	NUMBER OF RULEMAKINGS
Department of Agriculture	1
Department of Central Management Services	1
Commerce Commission	2
Council on Developmental Disabilities	2
Lieutenant Governor	1
Department of Natural Resources	1
Procurement Policy Board	1
Violence Prevention Authority	2
<b>TOTAL</b>	<b>11</b>

**2008**  
**REQUIRED RULEMAKINGS:**  
**JCAR ACTION**

AGENCY	REC	OBJ
Commerce Commission		1
Violence Prevention Authority	1	1
TOTAL	1	2

**2008**  
**REQUIRED RULEMAKINGS:**  
**BASIS FOR JCAR ACTION**

<b>Basis for Objection</b>	<b>Number of Objections</b>	<b>Percentage of Total</b>
Insufficient Standards	1	50%
Policy Not in Rule	1	50%
<b>TOTAL</b>	<b>2</b>	<b>100%</b>

<b>Basis for Recommendation</b>	<b>Number of Recommendations</b>	<b>Percentage of Total</b>
Policy Not in Rule	1	100%
<b>TOTAL</b>	<b>1</b>	<b>100%</b>

2008 JCAR ASSESSMENT OF APPROPRIATENESS OF AGENCY RESPONSE TO JCAR ACTION				
AGENCY	ASSESSMENT			
	APPROPRIATE	FAILURE TO REMEDY	NO FURTHER JCAR ACTION	JCAR WILL MONITOR
Department of Agriculture	1			
Department of Central Management Services	2			1
Department of Children and Family Services	1			
Commerce Commission				2
State Board of Education	2	1		
State Board of Election	1			1
Department of Financial and Professional Regulation	1			
Department of Healthcare and Family Services		8	2	
Board of Higher Education	2			
Department of Human Services	2			
State Board of Investment				1
Department of Natural Resources	2			
Department of Public Health	1		2	1
Department of Revenue	1			
Secretary of State	3			
Violence Prevention Authority		1	1	
<b>TOTAL</b>	<b>19</b>	<b>10</b>	<b>5</b>	<b>6</b>



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## Rule Deficiencies

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At its 11/08 meeting, JCAR recommended that the **State Board of Education** adopt rules implementing PA 94-855, effective 1/1/07, which amended Section 2-3.80 of the School Code affecting school districts offering secondary agricultural education programs. While SBE had proposed a rulemaking implementing PA 95-153 concerning agriculture science teacher education programs, it had not adopted rules implementing PA 94-855/HB 4986. That PA required school districts offering secondary agricultural education programs approved by SBE for State and federal funding to be affiliated with a State/national FFA chapter integral to instruction and not just as an extracurricular activity. The programs must also provide a mechanism for involving students in formal, supervised, agricultural-experience activities. In response to JCAR's Public Act Review and this Recommendation, SBE stated that it intended to adopt rules implementing PA 94-855 in 2009 in conjunction with a comprehensive revision of vocational education rules.

At its 9/08 meeting, JCAR objected to the **State Board of Education** not maintaining in its rules titled Student Information System (SIS) (23 Ill. Adm. Code 1.75) the guidelines under which districts are to report data, establishing how districts lacking technological capacity to participate in the electronic system will submit data, and setting timelines for submissions. SBE agreed to add those details to its rules 3 years ago, but failed to do so. Instead, SBE continued to maintain this policy outside rule. SBE responded by noting that Section 1.75 was written originally to accommodate districts that could not provide data electronically, but now all districts do so. Since 2005, SBE has used SIS to replace a number of reports that districts formerly submitted individually and anticipates adding other reports. SBE agreed to amend the SIS rule to include student academic performance as a type of information it gathers, but noted that guidelines for participation are unnecessary as districts use their own internal systems and reporting requirements with their own statutorily established timelines. SBE proposed an amendment to the SIS rule on 12/5/08 that removes these alternative reporting guidelines and adds student academic achievement and particular needs of a student to the types of student information that must be reported on SIS.

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## Potential Legislation

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Rulemakings considered by JCAR occasionally engender Objections or Recommendations based on lack of clear statutory authority, or result in written agreements with agencies to pursue legislation to clarify statute, resolve ambiguities or seek specific statutory authority. The following are major instances in which suggestions to address statutory issues, if the agency is to pursue the proposed policy, were made by JCAR during 2008.

The **State Board of Elections** proposed rules allowing county clerks in counties of more than 500,000 residents to rely on published obituary notices confirmed by funeral directors (instead of requiring certified copies of death certificates) for the purpose of purging deceased persons from voter registration rolls. JCAR objected to this rulemaking, citing lack of statutory authority and recommended that SBEL seek legislation to authorize this policy. SBEL responded by withdrawing the rulemaking and agreeing to seek legislation. JCAR also objected to another SBEL rulemaking that would have allowed local election authorities 30 days to submit amendments to their official canvasses of vote totals, citing lack of statutory authority to amend these totals. SBEL also withdrew this rulemaking and agreed to seek legislation if it opted to pursue such a policy in the future.

The **Illinois Violence Prevention Authority** adopted organizational rules stating that its rulemaking authority is limited to a description of its organization, procedures for handling public information requests, and procedures for adopting and amending the organizational rules. JCAR objected, stating that all agencies, including commissions, have rulemaking authority under the IAPA. JCAR particularly expressed concern that VPA is authorized to award grants to community and statewide organizations under the Violence Prevention Act. Without rules governing application procedures, award criteria and other aspects of the grant award process, the agency is in violation of IAPA requirements that agencies adopt rules for any policy affecting entities outside the agency and that agencies use rules to establish standards for exercising discretionary powers (e.g., approving or denying grant requests). When VPA refused to remedy its lack of grant rules, JCAR further recommended that, if VPA believes for some reason that it should not have to adhere to the tenets of the IAPA, it seek from the G.A. an exemption from that Act.

The **Department of Children and Family Services** proposed rules allowing the agency's Office of the Inspector General to share confidential information with various law enforcement entities when referring cases for possible criminal investigation or prosecution, conducting joint investigations with law enforcement, or pursuant to an intergovernmental agreement. JCAR objected because statute authorizes this information to be shared only with the Department of State Police. JCAR recommended that DCFS seek a change in the statute to allow this additional information sharing if it sees a need to do so. The agency had not yet responded at year's end.

The **Secretary of State** proposed rules authorizing its Business Services Department to accept and file electronically submitted documents and store, view and retrieve all Uniform Limited Partnership Act (ULPA) documents by means of an electronic storage system. SOS agreed to pursue changes in ULPA to authorize electronic document transmission, as many other statutes administered by SOS

Business Services already do. In relation to another SOS rulemaking on electronic registration and titling services, SOS agreed to seek legislation allowing title and registration fees to be refunded when a purchaser's financing application is denied and a sale canceled after the title and registration fees have been transmitted.

The **State Board of Investment** proposed rules shifting various responsibilities for administering the State Employees' Deferred Compensation Plan among SBI, the Department of Central Management Services and the recordkeeper (an outside firm contracted by CMS to oversee the program) and changing references to "investment funds" to "investment options". JCAR objected because the rulemaking lacked standards for selecting investment options. SBI agreed to withdraw the rulemaking and consider possible amendments to statute clarifying the roles of SBI and CMS in administering deferred compensation.

The **Department of Financial and Professional Regulation** proposed rules to codify longstanding policy that keeps confidential all administrative and judicial proceedings concerning corrective orders issued by DFPR's Division of Insurance against insurance companies determined to be in financial difficulty. The rulemaking states that the content and the existence of corrective orders, as well as all records of the proceedings leading up to an order, shall be kept confidential unless the insurer requests otherwise. However, the Insurance Code states only that the corrective order itself is to be held confidential; it does not specifically allow the agency to refuse to acknowledge that a corrective order even exists. DFPR had not adopted the rulemaking by the end of 2008, but said it would consider seeking an amendment to the statute to cover the existence of corrective orders.



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## Public Act Review

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Section 5-105 of the Illinois Administrative Procedure Act [5 ILCS 100/5-105] requires JCAR to maintain a review program to monitor the implementation of new laws and changes in law through State agency rulemaking activities. The Committee fulfills this statutory obligation through its Public Act review program.

Under this program, Committee staff reviews each new Public Act and makes a preliminary determination as to whether rulemaking might be necessary for proper implementation. After the list has been culled of those obviously not requiring rulemaking (appropriations, criminal and civil law, local government issues), the affected State agency is contacted for its opinion. If necessary, these written contacts are followed up with discussion between JCAR and the agency.

The final list of Public Acts for which JCAR and the agency agree that rulemaking is warranted is then monitored by the Committee as long as necessary to insure that progress is made toward implementation. The primary goal of the Committee in this program is to ensure that appropriate rules are put into effect in a timely manner, as required by Section 5-105 of the IAPA.

If suitable progress is not made, JCAR, by the vote of a majority of its members, can initiate an investigation into existing rules of the agency. If, after the agency's appearance before the Committee to explain its failure to adopt anticipated rules, the JCAR members are not satisfied with the agency response, the Committee can object to the agency's conduct and may initiate further legislation to clarify the issue.

Frequently an agency is prompted to complete necessary rulemaking by conversation with JCAR or the agency enters voluntarily into written Agreements with JCAR to more thoroughly implement statutory requirements. At other times, JCAR votes a Recommendation or Objection based on a need for additional rulemaking.

JCAR aggressively follows its statutory mandate to monitor the implementation of Public Acts. However, the Committee is seldom required to press an agency to implement a new Public Act. Agencies generally respond to JCAR inquiries that they agree rulemaking is necessary and by stating an approximate date for commencement of rulemaking activity. In some instances, they offer valid responses as to why rulemaking will not be necessary. Occasionally, the JCAR inquiry brings to an agency's attention a Public Act relating to its programs that had escaped its notice. The Public Act review program can be helpful to both the legislature and the agencies in meeting their obligation to put the laws of the State of Illinois into effect in a timely and effective manner.



# Special Review of ADA Procedures

JCAR recently audited the rules of all agencies to determine whether the agency had adopted the Americans With Disabilities Act Grievance Procedures required by federal law. 28 CFR 35.107 requires all agencies of state government employing at least 50 persons to adopt rules governing the grievance procedure. The following 21 agencies appeared to have no ADA rules and were contacted to determine whether the agency had a valid reason for considering itself exempt from the federal mandate:

- Department on Aging
- Department of Children and Family Services
- State Board of Education
- State Board of Elections
- Emergency Management Agency
- Department of Financial and Professional Regulation
- Gaming Board
- Governor's Office of Management and Budget
- Historic Preservation Authority
- Department of Human Rights
- Department of Labor
- Department of Military Affairs
- Department of Public Aid
- Department Public Health
- Racing Board
- State Employees' Retirement System
- Department of State Police
- State Toll Highway Authority
- State Universities Retirement System
- Student Assistance Commission
- Teachers' Retirement System

Seventeen agencies were prompted to adopt ADA rules and the Gaming Board and the Racing Board responded that they do not meet the 50 employee threshold. The Governor's Office of Management and Budget has still not responded.

# **Complaint Review Program**

The Illinois Administrative Procedure Act authorizes JCAR to review and investigate the rulemaking activities of State agencies when it receives a written complaint.

JCAR operates its complaint review program under Part 260 of its operational rules. Complaints may address one or more of the following: an existing rule of an agency; failure of an agency to fully or properly enforce its rules; absence of rules required by statute or necessary for the proper conduct of an agency program or function; and an agency rule that is applied, but not embodied in the rules of the agency promulgated pursuant to the IAPA.

Upon a receipt of a complaint, JCAR initiates a review to determine the need for a full investigation. Staff may raise questions or problems to discuss with the agency and will attempt to inform the agency of the substance of the complaint and any proposals for JCAR action prior to the meeting. Staff will report the results of the review and a proposal for action at a JCAR monthly meeting. A complaint may be placed on the agenda for a JCAR meeting by any JCAR member or the Executive Director if evidence exists that there are possible problems with the rules. If the same issues have been previously considered by JCAR, a complaint will not be placed on the agenda, unless the complaint reveals information not available to JCAR at the time the issue was considered and, if the information were available, it would have altered the outcome. Based on the complaint, JCAR may issue an Objection or Recommendation to existing rule, or to agency failure to maintain adequate rule, and afford the agency an opportunity to respond.

Complaints should be forwarded to the Executive Director of the Joint Committee at:

Joint Committee on Administrative Rules  
700 Stratton Building  
Springfield, Illinois 62706

## —Legislation Relating to Rulemaking Issues—

The following are issues considered by JCAR that engendered or were associated with legislation considered during the 2008 session.

**General.** During the 2008 session, the House added to numerous bills an amendment prohibiting any executive agency rulemaking and requiring the Governor to obtain legislative approval for all proposed rules. The Senate did not accept or concur in this amendment, which blocked passage of the underlying bills. Later in the session, the House modified the amendment on some bills to specify that agency rules must be adopted in accordance with the IAPA and receive approval from JCAR. This version was more acceptable to the Senate, and several bills containing it were passed and signed by the Governor.

The **Department of Agriculture** in 2006 was issued a Recommendation to clarify its quarantine rules. One issue, testing of cows for bovine brucellosis, was resolved through legislation in 2007. However, an issue that remained unresolved was how long dogs infected with canine brucellosis could be quarantined. SB 2775 was proposed in 2008 amending the Illinois Diseased Animals Act to provide that quarantined animals and premises must be released from quarantine when the DOA Director is satisfied that the reason for quarantine no longer exists. DOA was also to provide the animals' owner with a protocol for lifting the quarantine within 45 days after the quarantine is imposed. The bill passed the Senate but was not acted upon in the House.

The **Department of Public Health's** proposed Smoke Free Illinois Code rules received an Objection and Filing Prohibition from JCAR on 1/9/08. JCAR cited the lack of due process provisions for persons charged with violations. Several bills were introduced to resolve that issue and others raised during public comment on the proposed rules. The most comprehensive of these bills was SB 2707, which (1) amended the Act's definition of "place of employment" to exclude enclosed laboratories in accredited universities or government facilities where smoking is conducted exclusively for medical or scientific research, thereby allowing smoking in such facilities; (2) set fines for individual violators at \$100 for each offense and for businesses at \$250 for a first offense, \$500 for a second offense and \$2,500 for each subsequent offense within one year; (3) specified information to be contained in citations, including information on requesting an appeal hearing before DPH and the time period for either paying the fine or requesting a hearing; (4) forbade DPH from attempting to collect fines while a citation was being appealed; and (5) required DPH to allow violators to either pay fines without objection or contest citations in accordance with the IAPA. SB 2707 passed the Senate, but the House added an amendment prohibiting DPH rulemaking. The Senate took no action on concurrence.

The **Department of Healthcare and Family Services** in 2007 and again in 2008 attempted to expand eligibility for its Family Care health insurance program by filing emergency, and later proposed and preemptory, rules despite JCAR Suspensions and a Filing Prohibition citing lack of statutory authority. Bills introduced to resolve the statutory authority issue and other concerns included: (1) HB 6297, which amended the Children's Health Insurance Program Act to permit Family Care eligibility for persons earning up to 400% of the federal poverty level; (2) HB 315, a similar bill amending the Public Aid Code, which was contingent upon passage of fund sweeps (appropriations from funds set

aside for specific purposes) and supplemental appropriation bills; (3) HB 4660, creating a legislative oversight committee to oversee and report on any proposed changes in the State's health care system; and (4) HB 5928, amending CHIPA, All Kids and the Public Aid Code to provide that eligibility could be expanded only by statute and not by rule. The first two bills also prohibited agency rulemaking. None of the bills passed both houses.



# Judicial Activity Relating To

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## JCAR and IAPA

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Since JCAR's function is closely related to the interpretation of the Illinois Administrative Procedure Act (IAPA), it monitors and reports on court decisions and Attorney General opinions that affect the interpretation of the Act. One of the enumerated responsibilities of JCAR under the Act is "to study the impact of legislative changes, court rulings and administrative action on agency rules and rulemaking" [5 ILCS 100/5-105(c)]. This summary highlights significant judicial actions since enactment of the IAPA and discusses current activity.

### KEY INTERPRETATIONS OF THE IAPA

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- Two past decisions construing the IAPA in accordance with positions supported by JCAR are especially noteworthy. The cases involved an attempt by the Department of Public Aid to change the method by which it calculated Medicaid payments to nursing homes. In the first case, *Senn Park I* (*Senn Park Nursing Center v. Miller*, 118 Ill. App. 3d 504, 455 N.E.2d 153, 74 Ill. Dec. 123 (1983)), the First District Appellate Court held that DPA's failure to follow the IAPA rulemaking procedures invalidated a new method it utilized for calculating Medicaid payments. The court stated that the definition of a "rule" found in Sec. 1-70 of the IAPA should be broadly construed in order to safeguard the public's right to comment on proposed agency policies. DPA's change in calculating the Medicaid payments, the court ruled, fell within the Sec. 1-70 definition of rule since it was a statement of general agency policy. As that policy was not adopted in compliance with the IAPA, it was invalid.

DPA also argued that the amended procedure was exempt from the notice and publication requirements by Sec. 5-35(c) of the IAPA because the State Plan was a contractual arrangement with the federal government, and was exempt under the contracts exception of the IAPA. Sec. 5-35(c) states that: "The notice and publication requirements of this Section do not apply to a matter relating solely to agency management...or to public property, loans or contracts."

*Senn Park II* (*Senn Park Nursing Center v. Miller*, 118 Ill. App. 3d 733, 455 N.E.2d 162, 14 Ill. Reg. 132 (1983)) also addressed use of emergency rulemaking, and the Appellate Court ruled that an emergency rule in that instance in which the underlying "emergency" was created by the agency's failure to follow these (notice and comment) procedures (of the IAPA) in the first place, resulting from "an avoidable administrative failure to properly enact a rule in accordance with statutory requirements", was improper in that instance.

Both cases were consolidated for consideration by the Supreme Court. JCAR filed an amicus brief with the Illinois Supreme Court arguing that the inflation update procedure did not fall within the contract's exception. The Supreme Court agreed with the appellate court's interpretation of the contract's exception in which the lower court stated:

We are persuaded that under the IAPA, as under the Federal APA, a matter comes under the contract exception only when contracts are clearly and directly involved.... We believe that with regard to nursing homes, contracts, whether State-Federal or agency-provider, are not clearly and directly involved.... Accordingly, we conclude that the amended inflation update procedure is not a matter relating to contracts within the meaning of the IAPA. (118 Ill. App. 3d at 511)

The Supreme Court also stated that it is clear that the rulemaking procedure is intended to give interested persons an opportunity to submit their views and comments on rulemaking changes and that an agency must consider all submissions received. The court acknowledged that there are certain statutory exceptions to the notice and comment procedures, but that exceptions are of a limited nature and should be appropriately applied.

The court also agreed with the appellate court ruling that the amended inflation update procedure fell within the purview of the IAPA because the Public Aid Code incorporates the IAPA and the Code specifically requires rulemaking pursuant to the IAPA "during the process of establishing the payment rate for skilled nursing and intermediate care services, or when a substantial change in rates is proposed," in order to provide "an opportunity for public review and comment on the proposed rates prior to their becoming effective". [305 ILCS 5/5-5.7] (118 Ill. App. 3d at 512) The court found that the amended procedure fell within the definition of "rule" found in the IAPA and thus the failure of DPA to follow the notice and comment procedures required by the IAPA rendered the amended procedure invalid.

Following the decision of the appellate court in *Senn Park I*, DPA promulgated Emergency Rule 4.14221 implementing the amended inflation update procedure pursuant to the IAPA. Plaintiffs (*Senn Park II*) sought a declaratory judgment, asking the court to declare Emergency Rule 4.14221 void because there was no "emergency" as that term is defined in the IAPA. On 12/30/80, DPA withdrew the emergency rule. On appeal, the appellate court held that although the rule was withdrawn, the validity of the rule was at issue in order to determine the amount of reimbursement the plaintiffs were entitled to in *Senn Park I*. The appellate court further held that the circuit court had erred in finding the emergency rule valid because there was no emergency as that term is defined under the IAPA. The Supreme Court ruled that no emergency situation existed warranting use of emergency rulemaking.

- In *Sleeth v. Illinois Department of Public Aid* (125 Ill. App. 3d 847, 466 N.E.2d 703, 81 Ill. Dec. 117 (1984)), the Third District Appellate Court considered an appeal from a DPA decision to terminate disability benefits in 5 cases. The court found that the procedure utilized by the Department (Manual Release No. 83.5), which required applicants who were denied disability benefits to submit proof of disability within 14 days after the filing of appeal, was a "rule" under the IAPA. The IAPA states:

"Rule" means each agency statement of general applicability that implements, applies, interprets, or prescribes law or policy, but does not include (i) statements concerning only the internal management of an Agency and not affecting private rights or

procedures available to persons or entities outside the Agency, (ii) informal advisory rulings issued under Section 5-150, (iii) intra-agency memoranda, (iv) the prescription of standardized forms, or (v) documents prepared or filed or actions taken by the Legislative Reference Bureau under Section 5.04 of the Legislative Reference Bureau Act.

DPA contended the Manual Release was merely an intra-office memorandum, not subject to the IAPA. The court reasoned that the memorandum affected private rights and procedures available to persons outside DPA and that this type of statement by an agency is specifically included within the definition of "rule" under the Act. Since the memorandum was not properly promulgated pursuant to the IAPA, the court held the rule invalid and determined that the procedures followed by DPA violated State law.

- In *Kaufman Grain Co., Inc. v. Director, Department of Agriculture* (179 Ill. App. 3d 1040, 534 N.E.2d 1259, 128 Ill. Dec. 654 (1989)), the Fourth District Appellate Court held that DOA had no statute or rule that allowed it to settle disputes between a grain producer and a grain dealer or a grain warehouse. DOA improperly relied on policy that was not properly promulgated as rules in accordance with the IAPA and, therefore, was without authority to adjudicate such grain disputes. The *Kaufman* case is significant for the ruling of the court concerning attorney's fees. Sec. 10-55 of the IAPA provides that, in any case in which a party has any administrative rule invalidated by a court for any reason, the court shall award the party bringing the action the reasonable expenses of the litigation, including reasonable attorney's fees. The appellate court ruled that Kaufman was entitled to the award of attorney's fees it reasonably incurred in this litigation, including the fees incurred in the proceedings before the Department. The court stated that Sec. 10-55 of the IAPA gives those subject to regulation an incentive to oppose doubtful rules where compliance would otherwise be less costly than litigation. Therefore, the court awarded fees for the proceedings before DOA, as well as fees incurred in administrative review proceedings, noting that proceedings before an administrative agency are quite often more costly and time consuming than administrative review proceedings. The *Kaufman* case illustrated trends of the courts to rule unfavorably against agencies that have not promulgated their policies properly under the IAPA. The *Kaufman* decision specifically cites *Senn Park* and further strengthens the precedent it established. Award of attorney's fees was further strengthened in *Citizens Org. Proj. v. Dept. of Nat. Res.* (89 Ill. 2nd 593, 725 N.E.2d 195, 244 Ill. Dec. 896 (2000)), in which the Supreme Court affirmed the award of attorney's fees and litigation expenses where a citizen group obtained invalidation of a DNR rule governing a DNR permit decision.
- In *Coronet Insurance Company v. John E. Washburn, Director of Insurance of the State of Illinois* (201 Ill. App. 3d 633, 558 N.E.2d 1307, 146 Ill. Dec. 973 (1990)), the First District Appellate Court of Illinois held that an administrative agency may enact rules and regulations as limited by the authorizing statutory language; that an administrative rule carries with it the same presumption of validity as the statute; and a rule that is consistent with the spirit of the statute and furthers its purpose will be sustained. The appellate court also ruled that DOI's failure to give at least 45 days notice of a proposed rule to the general public did not



constitute violation of the IAPA, since the Act provides that changes in the text of a proposed rule may be made during the First Notice period and that such changes need not be published again prior to submission to JCAR.

- In *CIPS v. Illinois Commerce Commission* (268 Ill. App. 3d 471, 644 N.E. 2d 817, 206 Ill. Dec. 49 (1994)), the Fourth District Appellate Court ruled that JCAR did not create an impermissible filing prohibition when it informed ICC it would lift its filing prohibition on a proposed rule formulating rental rates for cable TV attachments to utility poles if the ICC removed allocation of the portion of pole neutral space to cable television.
- In *Weyland v. Manning* (309 Ill. App. 3d 542, 723 N.E.2d 387, 243 Ill. Dec. 355 (2000)), plaintiffs filed an action contesting a rule adopted by the Department of Natural Resources establishing a restricted boating zone on Griswold Lake. One element at issue was the adequacy of the Second Notice filed by DNR with JCAR. The Second District Appellate Court held that DNR complied with JCAR rule requirements that it list and analyze all comments concerning the rule and that its failure to list in the Second Notice persons who had requested a public hearing did not invalidate the rule.
- Payday Lending Rules: The regulation of short term (payday or cash for car title) loans involved rules ultimately adopted by the Department of Financial Institutions and/or Office of Banks and Real Estate. After JCAR Objection and after a Filing Prohibition expired, DFI adopted rules regulating the payday loan/cash for car title industries that were immediately challenged in *South 51 Development Corp, et al., v. Vega* (335 Ill.App.3d 542, 269 N.E.2<sup>nd</sup> 528 (2002)). The chief argument of plaintiffs was that there was an improper delegation of rulemaking authority to DFI. The court held that there was a valid delegation of legislative authority (the statute on which the rulemaking was based was somewhat sparse) and that the small business impact analysis performed at the time by DCEO (then DCCA) was facially sufficient, albeit not submitted to JCAR by the end of the first notice period.
- *Corey H. v. Board of Education of City of Chicago* (No. 92-C-3409, U.S. District Court for the Northern District of Illinois, Eastern Division). In 1992, disabled students brought an action against the Chicago Board of Education and State Board of Education alleging systemic failures to educate children with disabilities in the least restrictive environment (LRE), as required by the federal Individuals with Disabilities Education Act (IDEA). SBE and CBE entered into a settlement agreement with the plaintiffs. Under the settlement agreement, Judge Gettleman ordered SBE to change its policy on certification structure and standards for special education teachers through peremptory rulemaking. SBE filed 2 peremptory rulemakings to change special education teacher certification endorsement and create common core standards for all teachers. The first peremptory rule (titled Certification; 23 Ill. Adm. Code 25; 24 Ill. Reg. 16109) was objected to by JCAR on 11/14/00. SBE refused to withdraw the peremptory rule, stating it was not in a position to do so because it was under a federal judge's order. The rule was then suspended by JCAR on 2/21/01. The second peremptory rule (Standards for Certification in Special Education; 23 Ill. Adm. Code 28; 24 Ill. Reg. 16738) was objected to and suspended by JCAR on 1/9/01. SBE did not respond. On 2/27/01,



Judge Gettleman ordered SBE to implement both rulemakings, regardless of the JCAR suspensions.

Pursuant to IAPA requirements, SJR 26 was introduced in the General Assembly to continue the 2 suspensions. (At the time, Sec. 5-125 of the IAPA stated that if a joint resolution passed both houses of the General Assembly within the 180 days of the JCAR suspension, the rule would be considered repealed and the Secretary of State must immediately remove the rule from the collection of the effective rules.) SJR 26 passed the Senate on 5/21/01 with a vote of 56-0-0 and passed the House on 5/31/01 with a vote of 117-0-0. This was the first time a joint resolution of this nature passed both houses of the GA. As directed by Judge Gettleman, SBE implemented the settlement order as agency policy outside rule.

Downstate special education teachers and students then filed a motion to intervene, to allow them input into the teacher certification policies that would be effective statewide (*Reid L. v. Illinois State Board of Education and Corey H., No. 01-C-4180*). Judge Gettleman denied the Reid request. The U.S. Seventh Circuit Court of Appeals affirmed the district court. In the interim, the G.A. adopted PA 92-79 addressing many of these issues.

- In *Baker v. Adams et al.* (No. 02-CH-15962), the plaintiffs, James Baker and Roy Faust, among other things, requested that the court find Department of Human Services (DHS) Program Directive #02.01.01.020, governing the use of computers and related equipment in all DHS mental health and developmental disability (MH/DD) facilities, invalid because it was rule not properly promulgated according to the IAPA. The plaintiffs were Illinois residents currently confined at the Elgin Mental Health Center after being found not guilty by reason of insanity.

The directive in part specifically stated that individuals in a forensic program were not allowed to possess modems. Any computers with modems were to be removed or disabled. Internet access was allowed only through computers in the library or educational programs. The plaintiffs contended they were harmed as a result of not being allowed to communicate with others (e.g., friends, family and attorneys) via a computer (i.e., using a modem to access e-mail) and to order items off the Internet that required one giving an e-mail address. Additionally, Mr. Baker had been accepted into DePaul University's online undergraduate program, but was informed that since he lacked e-mail, he would not be able to participate in the program.

The court ruled the portion of the Program Directive prohibiting residents of any forensic program from possessing a modem was a rule promulgated in violation of the IAPA. The court also ruled invalid the provisions in the directive restricting the ability of recipients to freely send and receive computer disks. As a result, DHS adopted emergency rules (59 Ill. Adm. Code 109; 28 Ill. Reg. 1007), effective 12/26/03, to create a new Part governing the use of computers and related equipment in all DHS MH/DD facilities, thus codifying the former Program Directive into rule. A matching proposed rule was adopted in May 2004.

## RECENT JUDICIAL ACTION AND LITIGATION

- In *Champaign-Urbana Public Health District vs. ILRB* (354 Ill. App.3d, 482, 821 N.E.2d, 691, 290 Ill. Dec. 379, (2004)), the 4<sup>th</sup> District appellate court ruled that Illinois Labor Relation Board's use of emergency rulemaking to implement its card recognition rules was not an emergency under the IAPA, despite the fact the agency was implementing a recently enacted PA with an immediate effective date. The court said no emergency existed because union recognition could still occur under the existing methods or the union could wait until the new permanent rules were promulgated:

"(N)o facts have been presented to show that without the emergency rules the public would be confronted with a threatening situation... The reason for adopting an emergency rule 'should be truly emergent and persuasive to a reviewing court and considerations of administrative and fiscal convenience alone do not satisfy that standard. Agencies may not adopt emergency rules to eliminate an administrative need that does not threaten the public interest, safety, or welfare.' Here, the Board's reasoning for implementing the emergency rules can best be characterized as one for administrative convenience and not because of any stated public treat. Thus, the rules adopted by the Board...were invalid...."

In this instance, a court has taken a narrower view of the appropriate use of emergency rulemaking than JCAR's historical position. Implementation of a recently enacted Public Act by an agency may not now be appropriate action for an agency, barring other circumstances. Historically, the Committee has voted procedural Objections or Recommendations when agencies have employed emergency rulemaking to implement Public Acts after adequate time for regular rulemaking was present (the "agency created" emergency situation spoken of in *Senn Park*), but has not taken adverse action because an agency acted promptly to implement a recent Public Act through emergency rulemaking.

- The case of *Caro v. Blagojevich* (Circuit Court, Cook County, 07-CH-45464) was filed Nov. 26, 2007, in Cook County challenging the Governor's expansion of medical assistance under Family Care. Plaintiffs are Richard Caro, Ronald Gidwitz and Gregory Baise. Defendants are Governor Blagojevich, the Department of Healthcare and Family Services, HFS Director Barry Maram, and Comptroller Hynes. Gregory and Robin Jacaway and Elissa and Daniel Jeslis, clients of the expanded medical assistance program, later joined the case as Defendant-Intervenors. Plaintiffs sought to halt the Director's continued enforcement and implementation of HFS' emergency rule expanding medical assistance eligibility under Family Care to families earning up to 400 percent of the Federal Poverty Level - a rule that had been suspended by JCAR on Nov. 13, 2007.

Plaintiffs argued the rule violated the Illinois Constitution and statutes, including the IAPA. They also sought an injunction against HFS and its Director from enforcing or implementing the rule. Among the defenses raised by HFS was an argument that the JCAR suspension was unconstitutional, based on cases from other states supportive of that position.



On April 15, 2008, Circuit Judge James Epstein issued a preliminary injunction ordering HFS to cease "expending any public funds related to the Family Care program created by the emergency rule" and ordering the Comptroller not to authorize such payments (the order was later stayed with respect to the Comptroller). Judge Epstein did not rule on the constitutional issues raised, instead citing HFS' failure to include a work requirement as a condition of Family Care eligibility. (Federal and state statutes require medical assistance recipients to meet the same non-income criteria as TANF recipients.)

HFS claimed it could not fulfill the conditions of the injunction because it could not readily separate eligible from ineligible clients and was unable to determine which vouchers could and could not be presented to the Comptroller for payment. HFS also responded to the order by filing a peremptory rule imposing the work requirement upon Family Care recipients. However, JCAR suspended the peremptory rule on May 20, 2008, because the injunction did not direct HFS to file a peremptory rule and HFS did not meet the IAPA conditions for peremptory rulemaking. Defendants appealed the April 15 injunction to the First District Appellate Court, which upheld Judge Epstein's decision on Sept. 26, 2008.

In February, HFS presented to JCAR a proposed permanent version of the rule expanding Family Care eligibility. JCAR issued a Filing Prohibition against the rule on Feb. 26, 2008. HFS then attempted on March 10 to file the prohibited rule with the Secretary of State, and this filing became the subject of a new lawsuit (see below).

On Oct. 15, 2008, Judge Epstein issued another preliminary injunction barring HFS from expending any public funds to implement Family Care under the permanent or peremptory rule and ordering the Comptroller not to authorize such payments. HFS then claimed that the order could be interpreted in a manner that would force the agency to stop payments on all its medical assistance programs (affecting more than 500,000 Illinois residents). Based on HFS' argument, the Illinois Supreme Court on Nov. 12, 2008, issued a stay of enforcement overruling Judge Epstein and allowing HFS to continue implementing the program until the merits of the case can be decided.

At the end of 2008, HFS' appeal of Judge Epstein's April 15 injunction concerning the emergency rule was pending before the Supreme Court, while an appeal of the Oct. 15 injunction concerning the permanent and peremptory rules was pending before the First District Appellate Court. Both injunctions were intended to remain in effect until a trial or decision on the merits of the case. In December 2008, the Special Investigative Committee of the Illinois House formed to consider possible articles of impeachment against Governor Blagojevich included documents from Caro among its exhibits.

- In *Department of Healthcare and Family Services v. White* (Circuit Court, Cook County, 08-CH-11822), HFS and Director Maram filed suit against Secretary of State Jesse White in Cook County on March 28, 2008. HFS on March 10, 2008, attempted to file the proposed Family Care expansion rule that JCAR had prohibited on Feb. 26. The Secretary of State refused to accept it, citing the suspension that was still in effect on the earlier emergency rule, which under the IAPA prevents any other rule with the same effect from being filed. HFS

argued that JCAR's suspension of the emergency rule was invalid and that SOS had a duty to accept and publish the permanent rule in the Illinois Register. No action has been taken on this suit since May 2, 2008, when Attorney General Lisa Madigan filed a motion in support of SOS.

- In the ongoing case of *Menges v. Blagojevich* (U.S. District Court, Central District), an agreed joint motion to stay was entered in the U.S. District Court for the Central District of Illinois –Springfield on 10/9/07. On 4/1/05, DFPR adopted an emergency rule (68 Ill. Adm. Code 1330.91, 29 Ill. Reg. 5586, effective 4/1/05) requiring Division I (retail) pharmacies to dispense contraceptives. The Department later adopted a subsequent identical permanent rulemaking in the Illinois Register (29 Ill. Reg. 13639, effective 8/25/05). This agreement originated in a suit filed by 2 pharmacists, Peggy Pace and John Menges (Edwardsville), later joined by Walgreens, Inc., in Sangamon County on 4/13/05. This lawsuit contended that the emergency rule was unenforceable because it violates the Health Care Right of Conscience Act [745 ILCS 70], the Illinois Human Rights Act [775 ILCS 5] and Title VII of the federal Civil Rights Act of 1964 (PL 88-352, amended by PL 102-166). The agreement requires DFPR to adopt a rulemaking no later than 3/3/08 allowing objecting pharmacists to refuse to fill prescriptions based on their religious beliefs and requiring pharmacies to either staff a non-objecting pharmacist to fill contraceptive prescriptions or provide remote prescription dispensation from another pharmacy. On 11/26/07, DFPR proposed a permanent rulemaking (31 Ill. Reg. 15399) implementing the language contained in the joint agreement and adopted it (effective 4/16/08) at 32 Ill. Reg. 7116. In a related case, *Morr-Fitz, Inc. v. Blagojevich* (12/18/08), the Illinois Supreme Court ruled that the case be remanded to the Sangamon County circuit court to hear substantive arguments concerning the pharmacists' religious objections to the rulemakings.



# FILING PROHIBITIONS AND SUSPENSIONS ISSUED BY JCAR

DATE	AGENCY	ACTION	BASIS	ISSUE
1/20/09				
6/16/81	Health Fin Auth 4 IR 1915	Prohibition	Economic Impact/ Statutory Authority	Implements IHFA Act. Improper definition of "hospital services"; flawed reporting requirements; payor differentials; tries to establish a "contingent liability" agreement with the federal government.
4/13/82	EPA/DPH 4 IR 4669	Prohibition	Economic Impact	Public water supply samples; land & water samples; new regs on milk & milk products. Inadequate economic impact analysis; burdensome requirements for wastewater testing laboratories.
1/8/86	DNS 32 IAC 505 9 IR 1573	Prohibition	Economic Impact/ Federal Preemption	Extensive and burdensome regulation of nuclear steam-generating facilities.
9/23/87	DPR 68 IAC 250 11 IAC 3836	Prohibition	Legislative Intent/ Freedom of Speech/ Economic Impact	Limitation on pre-need solicitation and sale of funeral arrangements.
3/7/90	DPR 68 IAC 1400 13 IR 2913	Prohibition	Economic Impact/ Statutory Authority	Requirements for clinical psychologist licensure conflicted with statute or lacked statutory authority.
9/17/91	DCFS 89 IAC 300 15 IR 8735	Prohibition	Statutory Authority/ Legislative Intent	Disallowed a statutorily required Christian Science exemption in the definition of "neglected child".
1/8/92	DOI 50 IAC 2008 15 IR 14859	Prohibition	Economic Impact	Unlawful discrimination against the elderly by severely limiting the commission earned on the sale of Medicare supplement insurance policies, potentially restricting availability.
1/8/92	Aging 89 IAC 240 15 IR 17398	Suspension	Economic Impact	Program cutbacks without adequate notification and protection of elderly clients.
5/11/93	OSFM 41 IAC 100 16 IR 15681	Prohibition	Conflicting Regulations/Statutory Authority	Conflict between OSFM and DCFS on standards.
9/14/93	DOC 17 IAC 590, 4554	Prohibition	Legislative Intent	Limits number of persons who can hunt geese from a single blind or put to 3, without sufficient justification.
10/12/93	DPA 89 IAC 144,140 17 IR 15126 17 IR 15162	2 Suspensions	Statutory Authority/ Legislative Intent	Reduction in payments to facilities caring for DD clients, in contradiction of PA 88-88.

11/16/93	DFI 38 IAC 130 17 IR 6929	Prohibition	Economic Impact/ Legislative Intent	Unfair rate structure for cashing public aid checks.
12/14/93	ICC 83 IAC 315 93 IR 202	Prohibition	Economic Impact/ Overburdensome Regulation	Unfair rates paid by cable TV companies to utilities for use of pole space.
9/13/94	DPH 77 IAC 790 18 IR 3205 3202	2 Prohibitions (New & Repeal)	Statutory Authority/ Legislative Intent	Inclusion of drug products in the III. Drug Formulary that were not deemed equivalent by FDA or were exempt from FDA consideration.
11/15/94	DPA 89 IAC 140 18 IR 10922	Suspension	Statutory Authority	Medicaid coverage of abortions in rape/incest cases conflicted with statute limiting coverage to endangerment of mother's life.
2/7/95	SBE 23 IAC 401 18 IR 9756	Prohibition	Statutory Authority	Regulation of nonpublic special education facilities without statutory authority.
4/18/95	DASA 77 IAC 2090 19 IR 1156	Prohibition	Statutory Authority/ Legislative Intent/ Due Process	Alcoholism/substance abuse centers applying for certification as Medicaid providers w/deficiencies in treatment programs will have applications denied w/no chance for remediation and no chance to appeal the denial.
10/15/96	ICC 83 IAC 761 762 763 764 20 IR 8416 8407 8393 8395 8527 8541	2 (761, 763) Suspensions 4 Prohibitions (83 IAC 761, 762, 763, 764)	Overburdensome Regulation	Complex discovery procedures hinder ICC's ability to make an arbitration decision involving local telephone carriers and long distance carriers initiating local service within federal timeframes.
3/18/97	DNR 17 IAC 850 21 IR 322	Prohibition	Economic Impact	Eliminated commercial perch fishing on Lake Michigan will have an undue economic impact on the regulated business.
11/12/97	DPH 77 IAC 290 21 IR 13908	Suspension	Legislative Intent/ Adverse Impact on Availability of Adequate Health Care Facilities	Health facility plan review is statutorily required only for construction projects costing over \$5,000, not all projects.
2/17/99	SBEL 26 IAC 201,202 22 IR 7858 7862	2 Prohibitions	Statutory Authority/ Legislative Intent	Creates a system for staff review of nominating petitions for apparent conformity that is not consistent with statutory petition review procedures.

4/11/00	ICC 83 IAC 726 24 IR 1	Prohibition	Statutory Authority/ Economic Impact/ Undue Reg. Burden	Extends application of Enhanced 9-1-1 requirements to schools, governments and not-for-profits rather than the statutorily intended private businesses, corporations and industries.
6/13/00	ICC 83 IAC 727 24 IR 8635E	Suspension	Statutory Authority/ Economic Impact	Extends application of Enhanced 9-1-1 requirements to schools, governments and not-for-profits rather than the statutorily intended private businesses, corporations and industries.
11/29/00	DFI 38 IAC 110 24 IR 11717	Prohibition	Economic Impact	This attempt to regulate short-term (payday) loans and cash for title loans is an unreasonable economic burden for small lenders, which could result in diminished availability of loans for consumers with limited options.
1/9/01	ICC 83 IAC 727 24 IR 8454	Prohibition	Statutory Authority	Extends application of Enhanced 9-1-1 requirements to schools, governments and not-for-profits rather than the statutorily intended private businesses, corporations, and industries.
1/9/01	SBE 23 IAC 28 24 IR 16738	Suspension	Economic Impact	Under these peremptory rules, teachers will not be as qualified to teach children with special needs as current rule provides. Also, teachers will need additional training, which could result in fewer qualified teachers available to serve special education students.
2/21/01	SBE 23 IAC 25 24 IR 16109	Suspension	Economic Impact	Continued enforcement would constitute a serious threat to the welfare of special education students. Implementation may result in unqualified teachers being assigned to students for whom the teacher has no training or preparation.
11/19/02	DPA 89 IAC 120 26 IR 5047	Prohibition	Statutory Authority under federal law	Exceeds federal statutory authority by adding restrictions on determining whether an annuity was transferred at fair market value.
11/18/03	OBRE 38 IAC 375, 1000 1075 27 IR 16024 16029 16043	3 Suspensions	No Legitimate Emergency	Increases fees assessed on financial institutions without proving the existence of a situation meriting the use of emergency rulemaking.
2/18/04	DPR 68 IAC 1370 28 IR 1760	Suspension	Lack of standards	Lacks sufficient standards to be applied in determining whether a purported kickboxing event is actually an ultimate fighting event. (Amateur and professional kickboxing events are exempt from DPR's kickboxing events are exempt from DPR's authority to ban ultimate fighting.)
2/18/04	ICC 92 IAC 1710 27 IR 8600	Prohibition	Economic Impact	Increasing the amount a commercial relocater of trespassing vehicles is charged for filing relocation tow record forms and numbers, regardless of whether the relocater is reimbursed for the tow, may create an undue economic burden on these businesses, which may result in a decrease in relocater availability.
7/13/04	BHE 23 IAC 1020 28 IR 284	Prohibition	Statutory Authority/ Policy Outside Rule	Statute specifies programs eligible for Health Service Education Grants and does not give BHE authority to further deny that eligibility.
1/11/05	DPH 77 IAC 860 870 880 885 28 IR 1652	Prohibition	Threat to the Public Interest	DPH failed to give all affected parties the opportunity to discuss the proposed rulemaking and potential amendments, creating a threat to the public interest.



	1674 2613 1684 1717				
6/14/05	ESRB 41 IAC 220 29 IR 1101	Prohibition	Statutory Authority		Numerous provisions conflicted with statute or lacked statutory authority.
4/11/06	SBE 23 IAC 305 30 IR 86	Prohibition	Threat to the Public Interest		The rulemaking affects the public interest, safety and welfare by: setting nutrition standards that are substantively problematic as they do not provide a total approach to child nutrition through diet, nutrition education and exercise; by preempting the purview of the State Task Force on Wellness that is to consider the issue of school nutrition and report to the Governor and the General Assembly by January 2007; and by largely excluding local school district input and expertise in development of the proposal.
7/11/06	DCFS 89 IAC 406 408 29 IR 18180 18207	2 Prohibitions	Economic Impact		The rulemakings lack clarity, which threatens the public interest in that applicants/licensees and the families they serve could be adversely economically impacted.
7/11/06	DFPR 38 IAC 110 30 IR 2449	Prohibition	Statutory Authority		Application of Payday Loan Reform Act restrictions to Consumer Installment Loan Act licensees lacks specific statutory authority.
11/14/06	DOL 56 IAC 220 29 IR 19106	Prohibition	Statutory Authority		The provisions regarding when breaks may be taken are not statutorily required and appear to be unduly restrictive without significant benefit.
1/9/07	SBE 23 IAC 226 30 IR 4421	Prohibition	Threat to the Public Interest		Special Ed fed rules – Adoption of policies is not mandated by the USDoe
2/6/07	DOA 8 IAC 25 30 IR 14664	Prohibition	Statutory Authority		Regulation and licensing of dog daycare – DOA inadequately justified the need for this new regulatory activity, which was not specifically authorized by statute.
3/13/07	ESRB 41 IAC 1000 30 IR 16522	Prohibition	Threat to the Public Interest		Creates elevator safety rules – Adoption of 1 <sup>st</sup> Notice modification requiring mechanics to work under the direct supervision of a licensed contractor without an opportunity for public to comment is a serious threat to the public interest.
6/19/07	CMS 44 IAC 1 30 IR 19577	Prohibition	Statutory Authority		Adds piggybacking and multi-government as methods of procurement – Adoption would constitute a serious threat to the public interest because CMS lacks statutory authority to permit numerous purchasing procedures and requirements of the Procurement Code to be bypassed.
9/18/07	DFPR 50 IAC 937 31 IR 10699E	Suspension	No Emergency		Sets supplemental quarterly reporting requirements for health insurance firms – Contrary to the IAPA, no emergency situation existed that warranted adoption of an emergency rule. The emergency rule represents a threat to the public interest by imposing new costs without the opportunity for prior review and comment by the affected public.



10/10/07	DFPR 50 IAC 937 31 IR 10546	Prohibition	Statutory Authority	Sets supplemental quarterly reporting requirements for health insurance firms – No statutory authority; threat to public interest.
11/13/07	HFS 89 IAC 120 31 IR 15854E	Suspension	No Emergency	Expands FamilyCare: Expands eligibility for medical assistance to relatives of children receiving medical assistance with incomes of up to 400% of the Federal Poverty Level; picks up coverage for persons formerly receiving medical care under a federal SCHIP waiver that expired 9/30/07.
1/11/08	HFS 89 IAC 140 31 IR 13570	Prohibition	Budgetary Impact on State	Authorizes medical assistance payment for routine examinations and preventive services for persons over 18 (currently children only).
1/11/08	DPH 77 IAC 975 31 IR 13672	Prohibition	Due Process	Implements Smoke Free Illinois Act
2/13/08	HFS 89 IAC 147 32 IR 415	Suspension	No Emergency	Retools the Minimum Data Set reimbursement methodology, setting new rates, variables to consider when administering care, and recordkeeping requirements.
2/26/08	HFS 89 IAC 120 31 IR 15424	Prohibition	Adverse budgetary Impact	Expands FamilyCare: Expands eligibility for medical assistance to adult relatives of children receiving KidCare with incomes of up to 400% of the Federal Poverty Level. The rulemaking also picked up coverage for persons who had been receiving SCHIP funds under the federal waiver that expired 9/30/07, but JCAR did not Prohibit this portion.
5/20/08	HFS 89 IAC 120 32 IR 7212	Suspension	Improper use of Peremptory Rulemaking	Espousedly responded to the circuit court order in <i>Caro v. Blagojevich</i> by requiring FamilyCare expansion participants to meet TANF work requirements.
5/20/08	HFS 89 IAC 140 32 IR 6743	Suspension	Improper use of Peremptory Rulemaking	Requires use of tamper-resistant prescription pads in order for a prescription to be eligible for Medicaid reimbursement.
6/17/08	SBE 23 IAC 401 32 IR 4843	Suspension	No Emergency	Nonpublic and out-of-state providers of special education services to students with disabilities must maintain a written policy that use of behavioral intervention strategies relying on pain as an intentional method of control will not be applied to any student.
9/16/08	SBE 23 IAC 401 32 IR 4705	Prohibition	Contravenes Statute	Nonpublic and out-of-state providers of special education services to students with disabilities must maintain a written policy that use of behavioral intervention strategies relying on pain as an intentional method of control will not be applied to any student.

11/19/08	HFS 89 IAC 120 32 IR 18889	Suspension	Improper use of Peremptory Rulemaking	Espousedly responded to the appellate court order in <i>Caro v. Blagojevich</i> by requiring FamilyCare expansion participants to search for work or be in a training/vocational program. FamilyCare participants would be determined ineligible if found guilty of a 2 <sup>nd</sup> conviction for public aid fraud or failure to comply with child support obligations.
11/19/08	DHS 89 IAC 121 32 IR 16905	Suspension	Improper use of Peremptory Rulemaking	Implements provisions in the federal Food, Conservation and Energy Act of 2008 (FCEA) (PL 110-246) that rendered FS coupons obsolete after 6/18/08.

*IR = Illinois Register; IAC = Illinois Administrative Code*

# HISTORY OF GENERAL RULEMAKING BY AGENCY 1978 THROUGH 2008

AGENCY	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	00	01	02	03	04	05	06	07	08
Administrative Rules, Joint Committee on	3	5	1	1	1	-	-	-	3	5	-	-	-	-	1	7	2	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Aging, Department on	5	1	6	6	4	4	6	3	2	1	3	4	5	2	5	2	5	3	6	7	2	1	2	1	5	-	1	1	2	3	2
Agriculture, Department of [16]	14	21	14	16	24	18	41	15	11	26	21	16	7	2	18	17	13	22	15	14	17	18	7	13	13	11	13	5	11	2	3
Attorney General	3	1	2	-	3	2	3	2	2	2	3	-	1	1	1	-	-	1	-	-	3	2	3	-	2	1	1	3	1	1	-
Attorney General's Ethics Commission	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-
Auditor General	7	5	2	1	4	1	3	1	-	-	-	1	2	-	-	1	-	2	-	-	-	3	-	-	-	-	-	2	-	1	2
Banking Board of Illinois, State	-	-	-	-	-	-	-	-	-	-	2	-	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-
Capital Development Board [29]	2	1	3	-	3	-	2	9	4	6	3	2	-	-	2	1	-	2	11	8	6	2	7	8	1	3	2	2	2	3	-
Carnival-Amusement Safety Board	-	-	-	-	-	-	-	-	2	3	-	2	1	-	2	1	1	-	-	2	-	1	-	1	-	2	-	1	-	-	-
Central Management Services, Dept. of [2]	11	9	16	16	13	16	18	10	14	11	11	11	14	14	19	14	6	16	15	12	11	16	19	18	29	11	11	20	22	10	10
Children & Family Services, Department of	2	2	60	1	26	10	23	14	22	3	9	5	7	6	12	13	16	22	23	20	13	8	22	13	20	11	8	8	8	9	7
Civil Service Commission	-	-	-	2	-	-	2	-	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Civil Service System, State Universities	2	2	-	3	-	1	2	1	1	1	2	1	-	-	-	1	-	1	-	-	-	-	-	-	-	-	-	-	-	1	1
Commerce & Econ. Opport., Dept. of [15][23][25]	1	1	3	1	8	4	20	29	31	18	17	17	19	16	13	8	7	4	5	3	4	5	8	7	7	1	10	4	5	1	4
Commerce Commission	17	11	19	10	21	19	43	22	20	86	24	26	14	16	16	16	16	10	10	14	12	6	15	16	25	40	10	22	3	7	8
Community College Board	-	1	-	-	1	2	3	2	2	2	5	5	3	2	3	2	4	-	5	2	-	3	1	1	2	-	2	1	-	-	1
Comprehensive Health Insurance Plan	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Comptroller	1	2	4	3	4	4	3	1	5	3	4	2	2	-	1	2	3	-	1	2	1	1	1	3	3	1	-	-	1	-	-
Comptroller's Merit Commission	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	1	-	-	-	-	-	-	-	-	-	-	-	-	-
Cook County Local Records Commission	-	-	-	-	-	-	-	-	1	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Corrections, Department of	82	23	38	24	15	66	-	1	10	8	5	8	7	4	5	6	-	4	4	6	4	1	-	2	4	-	4	3	3	1	-
Court of Claims	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	1
CPA Board of Examiners	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	1	-	-	-	-	-	1	1	-	-	1	-
Criminal Justice Information Authority	1	2	-	-	-	-	-	1	1	2	-	1	2	-	2	2	-	-	1	1	1	-	1	4	-	-	1	-	-	-	-
Deaf and Hard of Hearing Commission	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Debt Collection Board	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-	-	-	2	-	-	-	1	-	-
Council on Developmental Disabilities	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	2
Drycleaners Environmental Response Trust Fund	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2	-	-	-	1	1	3	1	1
Eastern Illinois University	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Education, State Board of	3	4	9	8	3	7	5	12	30	12	9	10	10	5	9	10	10	10	7	6	18	14	4	22	14	8	16	50	23	23	24
Educational Labor Relations Board	-	-	-	-	-	-	4	3	-	-	2	5	-	-	2	-	-	-	-	-	-	-	-	-	1	-	-	10	-	-	-
Educational Opportunity, Consortium for	-	-	-	-	-	-	-	-	1	-	-	-	2	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Elections, State Board of	6	1	8	3	7	3	4	1	-	3	-	7	3	2	-	2	1	1	2	5	5	6	1	-	2	4	5	7	5	4	1
Elevator Safety Review Board	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	1	1	2
Emergency Management Agency [3][24]	-	-	1	4	12	10	4	3	22	9	9	8	8	3	12	19	8	5	11	6	12	8	5	10	8	5	3	9	-	7	12



# HISTORY OF GENERAL RULEMAKING BY AGENCY

## 1978 THROUGH 2008

AGENCY	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	00	01	02	03	04	05	06	07	08
Employment Security, Department of	-	-	-	-	-	-	3	13	10	5	19	16	11	14	8	13	8	3	2	5	1	1	4	2	1	2	5	4	-	2	14
Environmental Protection Agency	7	12	10	16	18	20	21	10	8	14	16	8	6	4	14	4	3	6	5	11	6	5	7	8	3	3	1	3	4	3	5
Ethics, Board of	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Executive Ethics Commission [33]	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-	-	-	2	-	1	-
Experimental Organ Transplantation Proc'd. Bd.	-	-	-	-	-	-	-	1	1	-	1	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Export Development Authority	-	-	-	-	-	-	-	1	1	1	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Financial and Professional Regulation [28]	30	41	53	38	36	23	61	32	30	32	40	34	27	38	41	39	29	43	42	45	61	45	55	29	51	59	32	43	33	30	25
Finance Authority [30]	5	2	1	1	2	3	4	2	10	6	2	1	3	-	4	3	1	1	5	2	1	2	2	2	-	1	-	-	-	-	-
Fire Marshal	1	2	1	1	7	3	5	3	3	5	1	4	4	5	6	1	3	6	5	5	6	-	3	3	6	3	2	3	2	11	8
Gaming Board	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2	1	3	2	1	2	2	2	3	3	1	3	6
Governor	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	1	-	-	-	-	-	-	-	-	-
Green Government Coordinating Council [34]	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2
Guardianship & Advocacy Commission	-	-	2	1	2	2	1	3	-	-	-	-	-	1	-	1	-	-	-	-	-	-	6	-	1	-	-	-	-	-	-
Healthcare and Family Services, Department of [31]	46	56	47	66	40	86	67	94	82	87	107	67	94	78	84	65	43	75	53	39	30	19	23	30	43	32	30	37	32	17	27
Health Facilities Planning Board	-	1	-	-	-	-	2	1	9	3	3	7	-	3	4	5	4	1	2	5	3	7	14	3	4	-	-	4	1	6	4
Hearing Aid Consumer Protection Board	-	-	-	-	-	-	-	-	-	1	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Higher Education CPO	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2	-	-	-	-	-	-	-	-	-	1
Higher Education, Board of	-	3	2	5	-	-	20	5	3	-	1	6	-	-	1	1	1	-	-	-	1	4	-	-	-	-	1	2	5	1	2
Historic Preservation Agency	-	-	-	-	-	-	-	-	-	-	-	-	-	1	2	2	-	-	1	1	-	-	1	-	1	-	-	-	-	-	-
Housing Development Authority	-	-	1	-	-	3	3	5	1	1	1	1	3	2	5	1	3	1	-	9	3	2	1	3	1	1	-	1	3	1	1
Human Rights Commission [17]	2	3	-	1	1	2	2	-	1	-	-	-	-	-	-	-	-	-	1	1	-	-	-	-	-	-	-	-	-	-	2
Human Rights, Department of	-	-	1	5	4	3	1	-	1	-	-	-	-	-	1	1	3	1	1	2	1	1	1	1	2	-	2	2	3	2	5
Human Services, Department of [11] [1] [18]	23	15	12	13	12	29	37	26	65	51	34	30	40	30	25	34	27	27	38	24	106	69	46	39	34	36	32	15	19	25	19
Illinois State University	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Independent Higher Ed Loan Authority	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Investments, Illinois State Board of	-	3	1	-	1	2	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	1	1
Labor Relations Board [22]	-	-	-	-	-	-	8	2	16	-	8	-	8	-	-	4	-	-	5	-	-	-	-	-	-	4	2	2	-	-	-
Labor, Department of	5	6	3	7	8	8	5	3	3	1	2	1	3	2	9	-	1	4	2	3	1	1	12	3	-	-	-	4	9	-	2
Law Enforcement Training Standards Bd. [20]	-	-	-	-	-	4	1	-	2	1	-	2	2	1	1	-	-	1	-	-	1	-	-	-	-	-	-	1	1	-	1
Legislative Information System	1	-	2	-	2	1	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	2	-	-	-	-	-	-	-	-
Legislative Space Needs Commission	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Lieutenant Governor	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	1	-	-	-	1	1	-	-	1	-	-	-	-	-	1
Liquor Control Commission	2	-	-	-	-	1	-	-	-	-	1	-	-	-	-	1	-	1	-	1	1	3	-	2	2	-	-	-	-	-	1
Local Records Commission	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Low-Level Radioactive Waste Task Group	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-



# HISTORY OF GENERAL RULEMAKING BY AGENCY 1978 THROUGH 2008

AGENCY	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	00	01	02	03	04	05	06	07	08
Medical Center Commission	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Military Affairs, Department of [5]	-	-	-	-	-	-	1	-	-	-	2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	1	2	-	-
Motor Vehicle Theft Prevention Council	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2	2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Natural Resources, Department of [10]	80	93	81	116	41	41	41	44	84	36	24	58	48	60	73	34	25	55	31	35	60	40	25	52	45	32	47	35	23	29	26
Nature Preserves Commission	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	1	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Northeastern Illinois Planning Commission	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-	1	-	-	1	-	-	-	-	-	-	-	-
Obsolete Boards & Commissions	10	4	5	15	2	-	-	10	2	3	3	1	1	3	3	3	2	5	-	3	-	-	5	-	-	-	-	-	-	-	-
Obsolete Higher Ed Boards (BOR, BOG) [13]	-	-	-	2	2	1	-	1	-	-	1	3	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Pollution Control Board	18	11	18	13	18	23	21	32	43	53	73	71	54	36	29	24	66	11	34	31	17	7	30	12	17	9	20	18	11	19	8
Prisoner Review Board	2	-	-	-	1	-	-	1	-	-	2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-	-
Procurement Policy Board	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	3	-	2	-	-	-	-	-	-	-
Property Tax Appeal Board	-	-	-	-	-	-	-	1	-	-	-	1	-	-	-	-	-	-	1	3	1	1	-	-	-	-	-	5	6	1	1
Public Health, Department of [21]	42	43	55	44	92	91	53	25	44	27	50	45	48	28	46	53	28	29	30	46	38	18	41	30	35	44	18	30	21	21	20
Purchased Care Review Board [27]	1	6	2	1	-	1	1	1	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-	-	-	-
Racing Board	10	14	19	10	22	9	7	13	14	9	11	5	40	17	20	25	27	37	16	23	4	4	17	20	16	6	15	22	11	17	20
Records Commission, State	-	-	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	1	1
Retirement System, General Assembly	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Retirement System, Judges	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Retirement System, State Employees'	2	3	5	3	4	1	2	3	-	-	1	-	2	1	1	-	-	-	1	2	2	1	2	1	1	-	2	1	2	-	1
Retirement System, State Universities	1	-	-	-	-	1	-	-	-	-	-	1	1	-	-	-	-	-	1	3	-	2	-	1	-	2	2	8	4	-	1
Retirement System, Teachers'	2	-	-	-	-	-	-	2	-	-	1	-	1	1	2	1	1	1	1	2	5	1	2	1	3	1	2	3	2	2	4
Revenue, Department of [26]	11	18	24	45	14	11	9	7	26	19	22	24	35	25	12	20	22	22	33	12	24	11	78	52	41	18	23	11	6	21	33
Savings Institutions, Board of [12]	-	-	-	-	-	-	-	-	-	-	-	-	-	2	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-
Secretary of State	15	21	12	26	14	31	20	19	8	18	30	31	21	14	13	21	13	14	21	27	16	10	14	13	26	7	17	24	25	23	-
Secretary of State's Merit Commission	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	20
Sex Offender Management Board	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2	-	2	1	-	-	2
Southern Illinois University Board of Trustees	-	-	-	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Specialized Care for Children, Division of	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	1	1	-	-	-	-	-	-	-	-
Sports Facilities Authority	-	-	-	-	-	-	-	-	-	-	2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
State Historical Library	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
State Mandates Board of Appeals	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
State Police Merit Board [8]	2	2	1	-	1	1	4	1	2	2	2	2	-	1	2	1	1	1	2	3	1	1	1	1	3	1	1	-	3	1	-
State Police, Department of [14]	2	-	1	-	1	2	2	1	2	1	4	-	2	1	3	2	-	1	4	2	4	-	4	5	3	6	3	1	2	4	-
State's Attorneys Appellate Prosecutor [4]	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Student Assistance Commission [9]	1	3	4	11	4	2	1	14	10	13	5	9	1	5	10	15	13	8	19	35	15	8	15	10	8	15	9	10	18	8	9

# HISTORY OF GENERAL RULEMAKING BY AGENCY 1978 THROUGH 2008

AGENCY	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	00	01	02	03	04	05	06	07	08
Toll Highway Authority, Illinois State	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2	-	-	1	1	1	-	1	2	-	1	1	1	3	-	-
Transportation, Department of [10]	13	13	13	17	5	5	10	16	23	16	25	18	15	32	21	28	18	22	12	13	23	17	19	16	22	14	22	15	26	4	49
Travel Control Board, Governor's	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-
Travel Control Board, Higher Education	-	1	1	1	2	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-
Travel Control Board, Legislative	1	1	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-
Travel Regulation Council	-	-	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-	-	-	-
Treasurer	1	1	-	-	-	1	1	-	-	-	-	4	-	2	5	7	-	-	-	-	4	-	3	2	2	-	-	4	3	-	-
University of Illinois, Board of Trustees	-	-	-	1	-	1	1	1	1	1	2	2	-	-	1	1	1	1	-	4	-	-	1	-	-	-	-	-	-	-	-
Veterans' Affairs, Department of	1	2	2	2	-	1	1	-	5	7	-	-	-	-	5	-	-	1	-	-	-	-	12	1	1	-	-	-	-	-	-
Workers' Compensation Commission [32]	4	1	3	2	3	1	2	7	2	-	-	-	6	1	2	-	-	4	-	-	-	-	-	-	-	-	-	-	1	-	1
(Workers' Comp) Commission Review Bd [32]	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
TOTALS	498	474	565	561	506	581	602	525	694	614	627	589	580	482	581	537	440	483	488	512	554	384	553	467	520	399	399	461	361	335	405

This table illustrates the number of rulemakings commenced by each agency during the calendar year.

[1] DASA, once a division of Dangerous Drugs Commission, became a separate agency in 1984. [2] The Depts. of Personnel and Administrative Services were combined in 1982 and the name was changed to Dept. of Central Management Services. [3] Includes Emergency Services & Disaster Agency, which was renamed IEMA in 1992. [4] Includes State's Attorneys Appellate Service Commission. [5] The Military & Naval Department became the Department of Military Affairs in 1988. [6] The Department of Registration & Education became DPR in 1988. [7] Commissioner of Savings & Loan Associations became the Commissioner of Savings & Residential Finance in 1990 and combined with the Commissioner of Banks and Trusts to become the Commissioner of Banks and Real Estate in 1996. The new office also absorbed the real estate licensing functions of DPR. [8] Until 1986, the Dept. of Law Enforcement Merit Board. [9] The State Scholarship Commission became ISAC in 1989. [10] In 1995, DOC, ENR (previously, Institute of Natural Resources), M&M, AMLRC, and DOT Waterways Division were merged into the Department of Natural Resources. [11] July 1997, DHS was formed from DASA, DORS, DMHDD, and specific programs from DPA and DPH. [12] In 1996, the Savings and Loan Advisory Board became the Board of Savings Institutions. [13] In 1996, the Board of Regents/Governors were disbanded in favor of individual boards of trustees. Also includes obsolete Trustees of State CC of E. St. L. [14] Prior to 1985, Department of Law Enforcement. [15] Prior to 1979, Department of Local Government Affairs. [16] Includes State Fair Agency (prior to 1979). [17] Absorbed Fair Employment Practices Commission in 1980. [18] In 1984, the Dangerous Drugs Commission was absorbed by DASA, which was then absorbed by DHS in 1997. [19] IEFA absorbed the Higher Education Loan Authority in c. 1988. [20] In 1993, the Local Gov. Law Enforcement Officers Training Board was renamed the Law Enforcement Training & Standards Board. [21] HCCC absorbed Health Finance Authority (1979-82) duties in 1984. HCCC was abolished in 2002 and its duties taken by DPH. [22] In 2000, the Local Labor Relations and State Labor Relations Boards were combined into the Illinois Labor Relations Board. [23] In 2003, DCCA became DCEO. [24] In 2003, DNS was absorbed by IEMA. [25] In 2003, Prairie State 2000 Auth. was transferred to DCEO. [26] In 2003, Department of the Lottery was transferred to Revenue. [27] The Governor's Purchased Care Review Board became the Purchased Care Review Board when it moved into SBE in 1996. [28] In 2004, the Departments of Insurance, Professional Regulation and Financial Institutions and the Office of Banks and Real Estate were combined into the Department of Financial and Professional Regulation. [29] Illinois Building Commission was absorbed by the Capital Development Board 7/1/04. [30] The Illinois Finance Authority absorbed Illinois Development Finance Authority, Illinois Farm Development Authority, Illinois Health Facilities Authority, Illinois Research Park Authority, Illinois Rural Bond Bank, Illinois Educational Facilities Authority and the Illinois Community Development Finance Corporation 1/1/04. [31] 7/1/05, the name of the Department of Public Aid was changed to the Department of Healthcare and Family Services. [32] On 1/1/05, the name of the Illinois Industrial Commission was changed to the Illinois Workers' Compensation Commission. [33] On 1/1/99, PA 90-737 repealed the Governor's Ethics Commission and replaced it with the Executive Ethics Commission. [34] PA 95-657 created the Green Government Coordinating Council in 2007.



# HISTORY OF EMERGENCY RULEMAKING BY AGENCY 1978 THROUGH 2008

AGENCY	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	00	01	02	03	04	05	06	07	08
Administrative Rules, Joint Committee on	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Aging, Department on	4	-	1	1	1	-	-	-	-	-	-	1	-	3	5	1	1	2	1	-	-	-	-	-	-	1	-	-	2	-	1
Agriculture, Department of [16]	1	3	2	-	-	-	1	2	1	1	2	1	-	1	-	3	1	1	1	1	1	-	3	-	2	5	1	-	-	-	1
Attorney General	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-	-	-	-	1	-	-	-	-
Auditor General	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-
Banking Board of Illinois, State	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-
Capital Development Board [29]	-	-	2	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	1	3	2	-	-	-	-	1	2	2	-	-
Carnival-Amusement Safety Board	-	-	-	-	-	-	-	-	1	-	-	1	1	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Central Management Services, Department of [2]	9	5	4	3	5	3	13	6	6	4	8	3	4	3	7	-	2	1	8	4	6	6	4	3	7	3	5	6	5	4	2
Children & Family Services, Department of	-	-	2	-	4	1	-	-	1	1	-	-	2	4	1	2	4	6	-	7	1	1	5	4	3	-	2	-	-	-	-
Commerce & Economic Opport., Dept. of [15][23][26]	1	-	-	-	-	-	-	6	7	2	1	8	2	2	2	3	-	-	-	1	1	2	4	2	1	2	1	6	3	-	2
Commerce Commission	1	-	5	-	2	5	3	1	5	3	4	2	-	1	1	-	2	-	2	4	6	-	8	5	1	2	1	-	-	-	2
Community College Board	-	-	-	-	-	1	2	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-
Comptroller	-	2	1	-	-	-	-	-	-	-	-	-	-	-	-	-	1	1	-	-	-	1	-	1	-	-	-	-	-	-	-
Corrections, Department of	21	8	4	2	15	-	-	-	-	-	-	-	3	-	1	4	-	-	1	4	-	-	-	-	-	-	1	-	-	1	-
CPA Board of Examiners	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Criminal Justice Information Authority	-	2	-	-	-	-	-	1	-	1	-	1	-	-	-	-	-	-	1	1	1	-	1	-	-	-	-	-	-	-	-
Dangerous Drugs Advisory Council	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Dry Cleaners Emergency Response Trust Fund	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2	-	-	-	-	-	-	-	-
Education, State Board of	2	-	3	1	-	3	-	9	5	2	-	2	2	-	-	-	1	1	2	-	8	1	2	2	-	1	3	3	4	1	4
Educational Labor Relations Board	-	-	-	-	-	-	4	1	-	-	1	1	-	-	1	-	-	-	-	-	-	-	-	-	-	-	2	-	-	-	-
Educational Opportunity, Consortium For	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Elections, State Board of	3	-	4	1	2	1	2	-	-	-	-	-	-	1	-	-	1	1	1	1	-	1	2	1	-	-	2	3	-	-	-
Elevator Safety Review Board	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-
Emergency Management Agency [3][25]	-	-	-	-	2	-	2	1	1	2	-	-	-	-	-	2	1	2	1	1	6	-	-	2	2	-	-	-	-	-	-
Employment Security, Department of	-	-	-	-	-	-	3	-	-	-	4	5	1	-	2	2	2	1	-	-	-	-	1	1	-	-	2	-	1	-	-
Environmental Protection Agency	2	3	3	2	-	-	2	2	2	3	-	1	-	-	1	-	-	1	-	2	-	-	-	-	-	-	-	-	-	-	-
Executive Ethics Commission [33]	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2	-	-	-
Experimental Organ Transplantation Proced. Bd.	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Export Development Authority	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Financial and Professional Regulation	5	5	12	6	8	8	6	4	10	5	6	7	2	6	7	7	1	6	2	7	11	3	15	4	8	11	5	2	4	2	2
Finance Authority	-	-	-	-	1	1	1	2	5	-	-	3	-	1	-	1	-	-	-	-	-	2	-	-	-	-	-	-	-	-	-
Fire Marshal	-	-	1	-	2	1	2	-	2	-	-	3	1	-	-	2	-	-	-	-	1	-	-	-	-	2	-	-	2	-	1
Gaming Board	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	1	1	1	-	-	1	1	1	-	-	-	-
Governor	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-
Green Government Coordinating Council	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2
Guardianship and Advocacy Commission	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Healthcare and Family Services, Department of [31]	19	14	4	3	4	2	6	6	9	18	17	15	18	19	27	17	6	29	15	22	13	10	6	10	25	16	20	20	24	8	12
Health Coordinating Council, Statewide	3	-	-	1	-	-	-	-	-	-	-	-	-	-	2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-

## HISTORY OF EMERGENCY RULEMAKING BY AGENCY

1978 THROUGH 2008

AGENCY	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	00	01	02	03	04	05	06	07	08
Health Facilities Planning Board	-	-	-	-	-	-	-	-	-	-	-	-	-	-	4	1	-	2	-	1	-	1	-	-	-	-	-	-	-	-	-
Higher Education CPO	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2	-	-	-	-	-	-	-	-	-	-
Higher Education Loan Authority, Independent	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Higher Education, Board of	-	1	-	1	-	-	1	-	-	-	-	1	-	-	-	-	-	-	-	-	-	2	-	-	-	-	-	1	2	-	-
Housing Development Authority	-	-	-	-	-	1	1	1	-	1	-	-	3	-	2	1	2	1	-	3	-	-	1	1	1	1	-	-	-	1	1
Human Rights Commission [17]	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-
Human Rights, Department of	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2	-	-	-	-	-	-	-	-	-	-	-	-
Human Services, Department of [11][1]	1	1	-	1	3	1	1	1	5	1	1	4	2	3	14	31	1	3	2	8	22	29	16	9	5	1	8	3	3	2	3
Investments, Illinois State Board of	-	1	-	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Labor Relations Board	-	-	-	-	-	8	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2	2	-	-	-	-
Labor, Department of	-	-	1	3	-	3	3	2	-	-	-	-	1	1	-	1	1	-	-	-	-	-	1	-	-	-	3	1	-	-	1
Legislative Information System	1	-	1	-	1	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Lieutenant Governor	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-
Liquor Control Commission	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-
Law Enforcement Training Standards Board	-	-	-	-	-	1	-	-	1	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	1	1	-	-	-
Medical Center Commission	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Military Affairs, Department of [24]	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	1	-	-	-
Motor Vehicle Theft Prevention Council	-	-	-	-	-	-	-	-	-	-	-	-	-	1	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Natural Resources, Department of [10]	21	18	14	14	6	5	1	7	4	1	7	6	3	6	6	5	6	4	-	1	4	5	1	5	4	1	2	4	1	4	1
Obsolete Boards & Commissions	4	1	-	-	-	-	-	-	1	1	2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Pollution Control Board	2	1	1	3	1	1	3	3	2	-	1	-	1	-	-	3	1	1	1	1	-	-	-	-	-	-	-	-	-	-	-
Prisoner Review Board	2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Public Health, Department of [18]	12	12	11	1	15	2	2	2	3	1	18	3	13	8	4	24	7	6	13	10	1	3	2	1	3	23	1	13	-	-	2
Purchased Care Review Board [28]	1	4	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Racing Board	6	7	2	-	2	2	1	2	-	-	1	1	-	2	1	3	1	4	1	-	-	3	-	-	3	1	2	3	1	3	2
Retirement System, State Employees'	-	-	3	-	1	-	1	1	-	-	-	-	-	-	-	-	-	-	-	2	-	-	-	-	1	-	1	-	-	-	-
Retirement System, State Universities	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-
Retirement System, Teachers'	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-	2	3	-	-	-	-	-	-	-	-	-	-
Revenue, Department of [27]	-	1	9	1	3	-	1	-	4	-	4	2	1	3	2	5	-	3	2	1	5	5	6	5	3	14	8	1	-	1	2
Secretary of State	3	2	-	1	1	3	3	6	2	-	-	1	-	3	2	5	2	1	7	4	3	3	7	10	4	4	3	2	4	-	5
Sex Offender Management Board	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2	-	-	-	-
Specialized Care for Children, Division of	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-
State Mandates Board of Appeals	-	-	-	-	1	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
State Police Merit Board [8]	3	-	1	-	-	-	2	-	-	-	-	1	-	-	1	-	-	-	1	-	-	-	1	-	-	-	-	-	-	-	-
State Police, Department of [14]	1	-	-	-	-	-	-	-	1	-	-	-	1	1	1	-	-	-	2	-	-	-	-	-	3	2	-	-	1	1	-
Student Assistance Commission [9]	-	-	-	1	2	1	-	-	2	2	1	-	1	5	2	3	1	1	2	-	1	-	-	-	-	1	1	-	-	1	-
Toll Highway Authority, Illinois State	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2	-	1	1	2	-	-	-	-
Transportation, Department of [10]	1	2	2	1	-	-	1	1	1	2	-	-	-	-	1	-	1	-	-	1	1	-	5	-	-	-	2	1	-	-	-
Travel Control Board, Legislative	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Travel Regulation Council	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-



# HISTORY OF EMERGENCY RULEMAKING BY AGENCY

## 1978 THROUGH 2008

AGENCY	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	00	01	02	03	04	05	06	07	08
Treasurer	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	1	-	3	1	-	-	1	2	-	-	-
University of Illinois, Board of Trustees	-	-	-	1	-	1	-	-	-	-	-	-	-	-	-	2	-	1	-	-	4	-	1	-	-	-	-	-	-	-	-
Veterans' Affairs, Department of	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Workers' Compensation Commission [32]	-	-	1	2	2	2	2	2	2	-	-	-	4	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
TOTALS	133	100	96	48	82	49	76	72	85	51	78	71	67	72	101	129	47	79	70	90	111	82	100	70	79	93	88	83	62	32	4

This table illustrates the number of rulemakings commenced by each agency during the calendar year.

[1] DASA, once a division of Dangerous Drugs Commission, became a separate agency in 1984. [2] The Depts. of Personnel and Administrative Services were combined in 1982 and the name was changed to Dept. of Central Management Services. [3] Includes Emergency Services & Disaster Agency, which was renamed IEMA in 1992. [4] Includes State's Attorneys Appellate Service Commission. [5] The Military & Naval Department became the Department of Military Affairs in 1988. [6] The Department of Registration & Education became DPR in 1988. [7] Commissioner of Savings & Loan Associations became the Commissioner of Savings & Residential Finance in 1990 and combined with the Commissioner of Banks and Trusts to become the Commissioner of Banks and Real Estate in 1996. The new office also absorbed the real estate licensing functions of DPR. [8] Until 1986, the Dept. of Law Enforcement Merit Board. [9] The State Scholarship Commission became ISAC in 1989. [10] In 1995, DOC, ENR (previously, Institute of Natural Resources), M&M, AMLRC, and DOT Waterways Division were merged into the Department of Natural Resources. [11] July 1997, DHS was formed from DASA, DORS, DMHDD, and specific programs from DPA and DPH. [12] In 1996, the Savings and Loan Advisory Board became the Board of Savings Institutions. [13] In 1996, the Board of Regents/Governors were disbanded in favor of individual boards of trustees. [14] Prior to 1985, Department of Law Enforcement. [15] Prior to 1979, Department of Local Government Affairs. [16] Includes State Fair Agency (prior to 1979). [17] Absorbed Fair Employment Practices Commission in 1980. [18] HCCC absorbed Health Finance Authority (1979-82) duties in 1984. HCCC was abolished in 2002 and its duties taken by DPH. [22] In 2000, the Local Labor Relations and State Labor Relations Boards were combined into the Illinois Labor Relations Board. [23] In 2003, DCCA became DCEO. [24] The Military & Naval Department became the Department of Military Affairs in 1988. [25] In 2003, DNS was absorbed by IEMA. [26] In 2003, Prairie State 2000 Auth. was transferred to DCEO. [27] In 2003, Department of the Lottery was transferred to Revenue. [28] The Governor's Purchased Care Review Board became the Purchased Care Review Board when it moved into SBE in 1996. [28] In 2004, the Departments of Insurance, Professional Regulation and Financial Institutions and the Office of Banks and Real Estate were combined into the Department of Financial and Professional Regulation. [29] Illinois Building Commission was absorbed by the Capital Development Board 7/1/04. [30] The Illinois Finance Authority absorbed Illinois Development Finance Authority, Illinois Farm Development Authority, Illinois Health Facilities Authority, Illinois Research Park Authority, Illinois Rural Bond Bank, Illinois Educational Facilities Authority and the Illinois Community Development Finance Corporation 1/1/04. [31] 7/1/05, the name of the Department of Public Aid was changed to the Department of Healthcare and Family Services. [32] On 1/1/05, the name of the Illinois Industrial Commission was changed to the Illinois Workers' Compensation Commission. [33] On 1/1/99, PA 90-737 repealed the Governor's Ethics Commission and replaced it with the Executive Ethics Commission.

# HISTORY OF PEREMPTORY/EXEMPT RULEMAKING BY AGENCY 1978 THROUGH 2008

AGENCY	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	00	01	02	03	04	05	06	07	08
Aging, Department of	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Agriculture, Department of [16]	-	-	-	-	-	-	-	9	10	9	7	5	5	4	6	4	7	5	5	6	4	2	5	3	2	4	4	4	2	3	2
Central Management Services, Department of [2]	-	-	-	-	-	-	-	-	6	7	7	3	4	2	2	1	3	6	4	5	11	3	6	3	2	1	10	13	13	8	10
Children & Family Services, Department of	-	-	-	1	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2	-	-	-
Commerce Commission	-	-	-	-	1	-	-	-	-	-	2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Comptroller	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Corrections, Department of	9	-	-	1	3	1	-	-	-	-	-	-	-	-	-	2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Education, State Board of	2	1	7	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2	-	-	-	-	-	-	-	-
Emergency Management Agency	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Employment Security, Department of	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2
Healthcare and Family Services, Department of [13]	12	6	5	31	6	3	9	2	3	4	2	1	1	1	1	1	-	1	1	-	-	-	-	-	-	-	-	-	-	-	3
Department of Human Services [11][1]	-	-	-	-	-	-	-	-	-	1	1	-	-	-	-	-	-	-	-	-	-	-	-	-	1	1	1	2	2	1	6
Labor, Department of	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Natural Resources, Department of [10]	-	-	-	-	-	-	-	2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Nature Preserves Commission	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Pollution Control Board	-	1	4	8	7	10	11	9	14	10	-	-	-	21	25	20	30	20	17	19	22	19	24	13	14	11	10	18	25	2	20
Public Health, Department of	-	-	-	-	1	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Retirement System, State Employees	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Revenue, Department of	-	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Transportation, Department of [10]	1	-	-	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	4	5	-	-	-
Travel Regulation Council	-	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Treasurer	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Obsolete Boards & Commissions	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
TOTALS	24	9	17	41	21	16	22	23	33	33	19	10	10	28	34	29	40	32	27	30	37	24	37	19	19	17	29	44	42	14	43

This table illustrates the number of rulemakings commenced by each agency during the calendar year.

[1] DASA, once a division of Dangerous Drugs Commission, became a separate agency in 1984. [2] The Depts. of Personnel and Administrative Services were combined in 1982 and the name was changed to Dept. of Central Management Services. [3] Includes Emergency Services & Disaster Agency, which was renamed IEMA in 1992. [4] Includes rules of the Institute of Natural Resources, which predated the Department. [5] The Military & Naval Department became the Department of Military Affairs in 1988. [6] The Department of Registration & Education became DPR in 1988. [7] Commissioner of Savings & Loan Associations became the Commissioner of Savings & Residential Finance in 1990. [8] Until 1986, the Dept. of Law Enforcement Merit Board. [9] The State Scholarship Commission became ISAC in 1989. [10] In 1995, DOC, M&M, AMLRC, and DOT Waterways Division were merged into the Department of Natural Resources. [11] July 1997, DHS was formed from DASA, DORS, DMHDD, and specific programs from DPA and DPH. [12] In 1996, the Savings and Loan Advisory Board became the Board of Savings Institutions. [13] 7/1/05, the name of the Department of Public Aid was changed to the Department of Healthcare and Family Services.

# Illinois Administrative Procedure Act

## ARTICLE 1. TITLE AND GENERAL PROVISIONS

### Section 1-1 Short title

This Act may be cited as the Illinois Administrative Procedure Act.

### Section 1-5 Applicability

- a) This Act applies to every agency as defined in this Act. Beginning January 1, 1978, in case of conflict between the provisions of this Act and the Act creating or conferring power on an agency, this Act shall control. If, however, an agency (or its predecessor in the case of an agency that has been consolidated or reorganized) has existing procedures on July 1, 1977, specifically for contested cases or licensing, those existing provisions control, except that this exception respecting contested cases and licensing does not apply if the Act creating or conferring power on the agency adopts by express reference the provisions of this Act. Where the Act creating or conferring power on an agency establishes administrative procedures not covered by this Act, those procedures shall remain in effect.
- b) The provisions of this Act do not apply to (i) preliminary hearings, investigations, or practices where no final determinations affecting State funding are made by the State Board of Education, (ii) legal opinions issued under Section 2-3.7 of the School Code, (iii) as to State colleges and universities, their disciplinary and grievance proceedings, academic irregularity and capricious grading proceedings, and admission standards and procedures, and (iv) the class specifications for positions and individual position descriptions prepared and maintained under the Personnel Code. Those class specifications shall, however, be made reasonably available to the public for inspection and copying. The provisions of this Act do not apply to hearings under Section 20 of the Uniform Disposition of Unclaimed Property Act.
- c) Section 5-35 of this Act relating to procedures for rulemaking does not apply to the following:
  - 1) Rules adopted by the Pollution Control Board that, in accordance with Section 7.2 of the Environmental Protection Act, are identical in substance to federal regulations or amendments to those regulations implementing the following: Sections 3001, 3002, 3003, 3004, 3005, and 9003 of the Solid Waste Disposal Act; Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980; Sections 307(b), 307(c), 307(d), 402(b)(8), and 402(b)(9) of the Federal



- Water Pollution Control Act; and Sections 1412(b), 1414(c), 1417(a), 1421, and 1445(a) of the Safe Drinking Water Act.
- 2) Rules adopted by the Pollution Control Board that establish or amend standards for the emission of hydrocarbons and carbon monoxide from gasoline powered motor vehicles subject to inspection under the Vehicle Emissions Inspection Law of 2005 or its predecessor laws.
  - 3) Procedural rules adopted by the Pollution Control Board governing requests for exceptions under Section 14.2 of the Environmental Protection Act.
  - 4) The Pollution Control Board's grant, pursuant to an adjudicatory determination, of an adjusted standard for persons who can justify an adjustment consistent with subsection (a) of Section 27 of the Environmental Protection Act.
  - 5) Rules adopted by the Pollution Control Board that are identical in substance to the regulations adopted by the Office of the State Fire Marshal under clause (ii) of paragraph (b) of subsection (3) of Section 2 of the Gasoline Storage Act.
- d) Pay rates established under Section 8a of the Personnel Code shall be amended or repealed pursuant to the process set forth in Section 5-50 within 30 days after it becomes necessary to do so due to a conflict between the rates and the terms of a collective bargaining agreement covering the compensation of an employee subject to that Code.
  - e) Section 10-45 of this Act shall not apply to any hearing, proceeding, or investigation conducted under Section 13-515 of the Public Utilities Act.
  - f) Article 10 of this Act does not apply to any hearing, proceeding, or investigation conducted by the State Council for the State of Illinois created under Section 3-3-11.05 of the Unified Code of Corrections or by the Interstate Commission or Adult Offender Supervision created under the Interstate Compact for Adult Offender Supervision or by the Interstate Commission for Juveniles created under the Interstate Compact for Juveniles.
  - g) This Act is subject to the provisions of Article XXI of the Public Utilities Act. To the extent that any provision of this Act conflicts with the provisions of that Article XXI, the provisions of that Article XXI control.

## **Section 1-10 Definitions**

As used in this Act, unless the context otherwise requires, terms have the meanings set forth in the following Sections.

## **Section 1-15 Administrative law judge**

"Administrative law judge" means the presiding officer or officers at the initial hearing before each agency and each continuation of that hearing. The term also includes but is not limited to hearing examiners, hearing officers, referees, and arbitrators.



## **Section 1-20 Agency**

"Agency" means each officer, board, commission, and agency created by the Constitution, whether in the executive, legislative, or judicial branch of State government, but other than the circuit court; each officer, department, board, commission, agency, institution, authority, university, and body politic and corporate of the State; each administrative unit or corporate outgrowth of the State government that is created by or pursuant to statute, other than units of local government and their officers, school districts, and boards of election commissioners; and each administrative unit or corporate outgrowth of the above and as may be created by executive order of the Governor. "Agency", however, does not include the following:

- 1) The House of Representatives and Senate and their respective standing and service committees, including without limitation the Board of the Office of the Architect of the Capitol and the Architect of the Capitol established under the Legislative Commission Reorganization Act of 1984.
- 2) The Governor.
- 3) The justices and judges of the Supreme and Appellate Courts.
- 4) The Legislative Ethics Commission

## **Section 1-25 Agency head**

"Agency head" means an individual or group of individuals in whom the ultimate legal authority of an agency is vested by any provision of law.

## **Section 1-30 Contested case**

"Contested case" means an adjudicatory proceeding (not including ratemaking, rulemaking, or quasi-legislative, informational, or similar proceedings) in which the individual legal rights, duties, or privileges of a party are required by law to be determined by an agency only after an opportunity for a hearing.

## **Section 1-35 License**

"License" includes the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of permission required by law, but it does not include a license required solely for revenue purposes.

## **Section 1-40 Licensing**

"Licensing" includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

## **Section 1-45 Municipality**

"Municipality" has the meaning ascribed to it in Section 1-1-2 of the Illinois Municipal Code.

### **Section 1-50 Order**

"Order" means an agency action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more specific persons.

### **Section 1-55 Party**

"Party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

### **Section 1-60 Person**

"Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

### **Section 1-65 Ratemaking**

"Ratemaking" or "ratemaking activities" means the establishment or review of or other exercise of control over the rates or charges for the products or services of any person, firm, or corporation operating or transacting any business in this State.

### **Section 1-70 Rule**

"Rule" means each agency statement of general applicability that implements, applies, interprets, or prescribes law or policy, but does not include (i) statements concerning only the internal management of an agency and not affecting private rights or procedures available to persons or entities outside the agency, (ii) informal advisory rulings issued under Section 5-150, (iii) intra-agency memoranda, (iv) the prescription of standardized forms, or (v) documents prepared or filed or actions taken by the Legislative Reference Bureau under Section 5.04 of the Legislative Reference Bureau Act.

### **Section 1-75 Small business**

"Small business" means a corporation or a concern, including its affiliates, that is independently owned and operated, not dominant in its field, and employs fewer than 50 full-time employees or has gross annual sales of less than \$4,000,000. For purposes of a specific rule, an agency may define small business to include employment of 50 or more persons if it finds that such a definition is necessary to adapt the rule to the needs and problems of small businesses and organizations.

### **Section 1-80 Small municipality**

"Small municipality" means any municipality of 5,000 or fewer inhabitants and any municipality of more than 5,000 inhabitants that employs fewer than 50 persons full-time. For purposes of a specific rule, an agency may define small municipality to include employment of more than 50

persons if it finds that such a definition is necessary to adapt the rule to the needs and problems of small municipalities.

### **Section 1-85 Not for profit corporation**

"Not for profit corporation" means a corporation organized under the General Not For Profit Corporation Act of 1986 that is not dominant in its field and employs fewer than 50 full-time employees or has gross annual sales of less than \$4,000,000. For purposes of a specific rule, an agency may define a not for profit corporation to include employment of 50 or more persons if it finds that such a definition is necessary to adapt the rule to the needs and problems of not for profit corporations.

### **Section 1-90 Rulemaking**

- a) "Rulemaking" means the process and required documentation for the adoption of Illinois Administrative Code text.
- b) Required documentation.
  - 1) At the time of original proposal, rulemaking documentation must consist of a notice page and new, amendatory, or repealed text. New, repealed, and amendatory text must be depicted in the manner required by Secretary of State rule. Amendatory rulemakings must indicate text deletion by striking through all text that is to be omitted and must indicate text addition by underlining all new text.
  - 2) At the time of adoption, documentation must also include pages indicating the text of the new rule, without striking and underlining, for inclusion in the official Secretary of State records, the certification required under Section 5-65(a), and any additional documentation required by Secretary of State rule.
  - 3) For a required rulemaking adopted under Section 5-15, an emergency rulemaking under Section 5-45, or a peremptory rulemaking under Section 5-50, the documentation requirements of paragraphs (b)(1) and (2) of this Section apply at the time of adoption.
- c) "Background text" means existing text of the Illinois Administrative Code that is part of a rulemaking but is not being amended by the rulemaking. Background text in rulemaking documentation shall match the current text of the Illinois Administrative Code.
- d) No material that was originally proposed in one rulemaking may be combined with another proposed rulemaking that was initially published without that material. However, this does not preclude separate rulemakings from being combined for publication at the time of adoption as authorized by Secretary of State rule.

## **ARTICLE 5. RULEMAKING PROVISIONS**

### **Section 5-5 Applicability**



All rules of agencies shall be adopted in accordance with this Article.

#### **Section 5-10 Adoption and availability of rules**

- a) In addition to other rulemaking requirements imposed by law, each agency shall (i) adopt rules of practice setting forth the nature and requirements of all formal hearings and (ii) make available for public inspection all rules adopted by the agency in the discharge of its functions.
- b) Each agency shall make available for public inspection all final orders, decisions, and opinions, except those deemed confidential by State or federal statute and any trade secrets.
- c) No agency rule is valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been made available for public inspection and filed with the Secretary of State as required by this Act. No agency, however, shall assert the invalidity of a rule that it has adopted under this Act when an opposing party has relied upon the rule.
- d) Rulemaking that creates or expands a State mandate on units of local government, school districts, or community college districts is subject to the State Mandates Act. The required Statement of Statewide Policy Objectives shall be published in the Illinois Register at the same time that the first notice under Section 5-40 is published or when the rule is published under Section 5-45 or 5-50.

#### **Section 5-15 Required rules**

- a) Each agency shall maintain as rules the following:
  - 1) A current description of the agency's organization with necessary charts depicting that organization.
  - 2) The current procedures by which the public can obtain information or make submissions or requests on subjects, programs, and activities of the agency. Requests for copies of agency rules shall not be deemed Freedom of Information Act requests unless so labeled by the requestor.
  - 3) Tables of contents, indices, reference tables, and other materials to aid users in finding and using the agency's collection of rules currently in force.
  - 4) A current description of the agency's rulemaking procedures with necessary flow charts depicting those procedures.
  - 5) Any rules adopted under this Section in accordance with Sections 5-75 and 10-20 of this Act.
- b) The rules required to be filed by this Section may be adopted, amended, or repealed and filed as provided in this Section instead of any other provisions or requirements of this Act. The rules required by this Section may be adopted, amended, or repealed by filing a certified copy with the Secretary of State under subsections (a) and (b) of Section 5-65 and may become effective immediately.



## **Section 5-20 Implementing discretionary powers**

Each rule that implements a discretionary power to be exercised by an agency shall include the standards by which the agency shall exercise the power. The standards shall be stated as precisely and clearly as practicable under the conditions to inform fully those persons affected.

## **Section 5-25 Ratemaking**

Every agency that is empowered by law to engage in ratemaking activities shall establish by rule, not inconsistent with the provisions of law establishing its ratemaking jurisdiction, the practice and procedures to be followed in ratemaking activities before the agency.

## **Section 5-30 Regulatory flexibility**

When an agency proposes a new rule or an amendment to an existing rule that may have an impact on small businesses, not for profit corporations, or small municipalities, the agency shall do each of the following:

- a) The agency shall consider each of the following methods for reducing the impact of the rulemaking on small businesses, not for profit corporations, or small municipalities. The agency shall reduce the impact by utilizing one or more of the following methods if it finds that the methods are legal and feasible in meeting the statutory objectives that are the basis of the proposed rulemaking.
  - 1) Establish less stringent compliance or reporting requirements in the rule for small businesses, not for profit corporations, or small municipalities.
  - 2) Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses, not for profit corporations, or small municipalities.
  - 3) Consolidate or simplify the rule's compliance or reporting requirements for small businesses, not for profit corporations, or small municipalities.
  - 4) Establish performance standards to replace design or operational standards in the rule for small businesses, not for profit corporations, or small municipalities.
  - 5) Exempt small businesses, not for profit corporations, or small municipalities from any or all requirements of the rule.
- b) Before or during the notice period required under subsection (b) of Section 5-40, the agency shall provide an opportunity for small businesses, not for profit corporations, or small municipalities to participate in the rulemaking process. The agency shall utilize one or more of the following techniques. These techniques are in addition to other rulemaking requirements imposed by this Act or by any other Act.
  - 1) The inclusion in any advance notice of possible rulemaking of a statement that the rule may have an impact on small businesses, not for profit corporations, or small municipalities.

- 2) The publication of a notice of rulemaking in publications likely to be obtained by small businesses, not for profit corporations, or small municipalities.
  - 3) The direct notification of interested small businesses, not for profit corporations, or small municipalities.
  - 4) The conduct of public hearings concerning the impact of the rule on small businesses, not for profit corporations, or small municipalities.
  - 5) The use of special hearing or comment procedures to reduce the cost or complexity of participation in the rulemaking by small businesses, not for profit corporations, or small municipalities.
- c) Before the notice period required under subsection (b) of Section 5-40, the Secretary of State shall provide to the Business Assistance Office of the Department of Commerce and Community Affairs a copy of any proposed rules or amendments accepted for publication. The Business Assistance Office shall prepare an impact analysis of the rule describing the rule's effect on small businesses whenever the Office believes, in its discretion, that an analysis is warranted or whenever requested to do so by 25 interested persons, an association representing at least 100 interested persons, the Governor, a unit of local government, or the Joint Committee on Administrative Rules. The impact analysis shall be completed within the notice period as described in subsection (b) of Section 5-40. Upon completion of the analysis the Business Assistance Office shall submit this analysis to the Joint Committee on Administrative Rules, any interested person who requested the analysis, and the agency proposing the rule. The impact analysis shall contain the following:
- 1) A summary of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule.
  - 2) A description of the types and an estimate of the number of small businesses to which the proposed rule will apply.
  - 3) An estimate of the economic impact that the regulation will have on the various types of small businesses affected by the rulemaking.
  - 4) A description or listing of alternatives to the proposed rule that would minimize the economic impact of the rule. The alternatives must be consistent with the stated objectives of the applicable statutes and regulations.

### **Section 5-35 Procedure for rulemaking**

- a) Before the adoption, amendment, or repeal of any rule, each agency shall accomplish the actions required by Section 5-40, 5-45, or 5-50, whichever is applicable.
- b) No action by any agency to adopt, amend, or repeal a rule after this Act has become applicable to the agency shall be valid unless taken in compliance with this Section. A proceeding to contest any rule on the ground of non-compliance with the procedural requirements of this Section must be commenced within 2 years from the effective date of the rule.

- c) The rulemaking procedures of this Article 5 do not apply to a matter relating solely to agency management or personnel practices or to public property, loans, or contracts.

#### **Section 5-40 General rulemaking**

- a) In all rulemaking to which Sections 5-45 and 5-50 do not apply, each agency shall comply with this Section.
- b) Each agency shall give at least 45 days' notice of its intended action to the general public. This first notice period shall commence on the first day the notice appears in the Illinois Register. The first notice shall include all the following:
  - 1) The text of the proposed rule, the old and new materials of a proposed amendment, or the text of the provision to be repealed.
  - 2) The specific statutory citation upon which the proposed rule, the proposed amendment to a rule, or the proposed repeal of a rule is based and by which it is authorized.
  - 3) A complete description of the subjects and issues involved.
  - 3.5) A descriptive title or other description of any published study or research report used in developing the rule, the identity of the person who performed such study, and a description of where the public may obtain a copy of any such study or research report. If the study was performed by an agency or by a person or entity that contracted with the agency for the performance of the study, the agency shall also make copies of the underlying data available to members of the public upon request if the data are not protected from disclosure under the Freedom of Information Act.
  - 4) For all proposed rules and proposed amendments to rules, an initial regulatory flexibility analysis containing a description of the types of small businesses subject to the rule; a brief description of the proposed reporting, bookkeeping, and other procedures required for compliance with the rule; and a description of the types of professional skills necessary for compliance.
  - 5) The time, place, and manner in which interested persons may present their views and comments concerning the proposed rulemaking. During the first notice period, the agency shall accept from any interested persons data, views, arguments, or comments. These may, in the discretion of the agency, be submitted either orally or in writing or both. The notice published in the Illinois Register shall indicate the manner selected by the agency for the submissions. The agency shall consider all submissions received. The agency shall hold a public hearing on the proposed rulemaking during the first notice period if (i) during the first notice period, the agency finds that a public hearing would facilitate the submission of views and comments that might not otherwise be submitted or (ii) the agency receives a request for a public hearing, within the first 14 days after publication of the notice of proposed rulemaking in the Illinois Register, from 25 interested persons, an association representing at least



100 interested persons, the Governor, the Joint Committee on Administrative Rules, or a unit of local government that may be affected. At the public hearing, the agency shall allow interested persons to present views and comments on the proposed rulemaking. A public hearing in response to a request for a hearing may not be held less than 20 days after the publication of the notice of proposed rulemaking in the Illinois Register unless notice of the public hearing is included in the notice of proposed rulemaking. A public hearing on proposed rulemaking may not be held less than 5 days before submission of the notice required under subsection (c) of this Section to the Joint Committee on Administrative Rules. Each agency may prescribe reasonable rules for the conduct of public hearings on proposed rulemaking to prevent undue repetition at the hearings. The hearings must be open to the public and recorded by stenographic or mechanical means. At least one agency representative shall be present during the hearing who is qualified to respond to general questions from the public regarding the agency's proposal and the rulemaking process.

- c) Each agency shall provide additional notice of the proposed rulemaking to the Joint Committee on Administrative Rules. The period commencing on the day written notice is received by the Joint Committee shall be known as the second notice period and shall expire 45 days thereafter unless before that time the agency and the Joint Committee have agreed to extend the second notice period beyond 45 days for a period not to exceed an additional 45 days or unless the agency has received a statement of objection from the Joint Committee or notification from the Joint Committee that no objection will be issued. The written notice to the Joint Committee shall include (i) the text and location of any changes made to the proposed rulemaking during the first notice period in a form prescribed by the Joint Committee; (ii) for all proposed rules and proposed amendments to rules, a final regulatory flexibility analysis containing a summary of issues raised by small businesses during the first notice period and a description of actions taken on any alternatives to the proposed rule suggested by small businesses during the first notice period, including reasons for rejecting any alternatives not utilized; and (iii) if a written request has been made by the Joint Committee within 30 days after initial notice appears in the Illinois Register under subsection (b) of this Section, an analysis of the economic and budgetary effects of the proposed rulemaking. After commencement of the second notice period, no substantive change may be made to a proposed rulemaking unless it is made in response to an objection or suggestion of the Joint Committee. The agency shall also send a copy of the final regulatory flexibility analysis to each small business that has presented views or comments on the proposed rulemaking during the first notice period and to any other interested person who requests a copy. The agency may charge a reasonable fee for providing the copies to cover postage and handling costs.
- d) After the expiration of the second notice period, after notification from the Joint Committee that no objection will be issued, or after a response by the agency to a



statement of objections issued by the Joint Committee, whichever is applicable, the agency shall file, under Section 5-65, a certified copy of each rule, modification, or repeal of any rule adopted by it. The copy shall be published in the Illinois Register. Each rule hereafter adopted under this Section is effective upon filing unless a later effective date is required by statute or is specified in the rulemaking.

- e) No rule or modification or repeal of any rule may be adopted, or filed with the Secretary of State, more than one year after the date the first notice period for the rulemaking under subsection (b) commenced. Any period during which the rulemaking is prohibited from being filed under Section 5-115 shall not be considered in calculating this one-year time period.

#### **Section 5-45 Emergency rulemaking**

- a) "Emergency" means the existence of any situation that any agency finds reasonably constitutes a threat to the public interest, safety, or welfare.
- b) If any agency finds that an emergency exists that requires adoption of a rule upon fewer days than is required by Section 5-40 and states in writing its reasons for that finding, the agency may adopt an emergency rule without prior notice or hearing upon filing a notice of emergency rulemaking with the Secretary of State under Section 5-70. The notice shall include the text of the emergency rule and shall be published in the Illinois Register. Consent orders or other court orders adopting settlements negotiated by an agency may be adopted under this Section. Subject to applicable constitutional or statutory provisions, an emergency rule becomes effective immediately upon filing under Section 5-65 or at a stated date less than 10 days thereafter. The agency's finding and a statement of the specific reasons for the finding shall be filed with the rule. The agency shall take reasonable and appropriate measures to make emergency rules known to the persons who may be affected by them.
- c) An emergency rule may be effective for a period of not longer than 150 days, but the agency's authority to adopt an identical rule under Section 5-40 is not precluded. No emergency rule may be adopted more than once in any 24 month period, except that this limitation on the number of emergency rules that may be adopted in a 24 month period does not apply to (i) emergency rules that make additions to and deletions from the Drug Manual under Section 5-5.16 of the Illinois Public Aid Code or the generic drug formulary under Section 3.14 of the Illinois Food, Drug and Cosmetic Act or (ii) emergency rules adopted by the Pollution Control Board before July 1, 1997 to implement portions of the Livestock Management Facilities Act, or (iii) emergency rules adopted by the Illinois Department of Public Health under subsections (a) through (i) of Section 2 of the Department of Public Health Act when necessary to protect the public's health. Two or more emergency rules having substantially the same purpose and effect shall be deemed to be a single rule for purposes of this Section.
- d) In order to provide for the expeditious and timely implementation of the State's fiscal year 1999 budget, emergency rules to implement any provision of Public

Act 90-587 or 90-588 or any other budget initiative for fiscal year 1999 may be adopted in accordance with this Section by the agency charged with administering that provision or initiative, except that the 24-month limitation on the adoption of emergency rules and the provisions of Sections 5-115 and 5-125 do not apply to rules adopted under this subsection (d). The adoption of emergency rules authorized by this subsection (d) shall be deemed to be necessary for the public interest, safety, and welfare.

- e) In order to provide for the expeditious and timely implementation of the State's fiscal year 2000 budget, emergency rules to implement any provision of this amendatory Act of the 91st General Assembly or any other budget initiative for fiscal year 2000 may be adopted in accordance with this Section by the agency charged with administering that provision or initiative, except that the 24-month limitation on the adoption of emergency rules and the provisions of Sections 5-115 and 5-125 do not apply to rules adopted under this subsection (e). The adoption of emergency rules authorized by this subsection (e) shall be deemed to be necessary for the public interest, safety, and welfare.
- f) In order to provide for the expeditious and timely implementation of the State's fiscal year 2001 budget, emergency rules to implement any provision of this amendatory Act of the 91st General Assembly or any other budget initiative for fiscal year 2001 may be adopted in accordance with this Section by the agency charged with administering that provision or initiative, except that the 24-month limitation on the adoption of emergency rules and the provisions of Sections 5-115 and 5-125 do not apply to rules adopted under this subsection (f). The adoption of emergency rules authorized by this subsection (f) shall be deemed to be necessary for the public interest, safety, and welfare.
- g) In order to provide for the expeditious and timely implementation of the State's fiscal year 2002 budget, emergency rules to implement any provision of this amendatory Act of the 92nd General Assembly or any other budget initiative for fiscal year 2002 may be adopted in accordance with this Section by the agency charged with administering that provision or initiative, except that the 24-month limitation on the adoption of emergency rules and the provisions of Sections 5-115 and 5-125 do not apply to rules adopted under this subsection (g). The adoption of emergency rules authorized by this subsection (g) shall be deemed to be necessary for the public interest, safety, and welfare.
- h) In order to provide for the expeditious and timely implementation of the State's fiscal year 2003 budget, emergency rules to implement any provision of this amendatory Act of the 92nd General Assembly or any other budget initiative for fiscal year 2003 may be adopted in accordance with this Section by the agency charged with administering that provision or initiative, except that the 24-month limitation on the adoption of emergency rules and the provisions of Sections 5-115 and 5-125 do not apply to rules adopted under this subsection (h). The adoption of emergency rules authorized by this subsection (h) shall be deemed to be necessary for the public interest, safety, and welfare.
- i) In order to provide for the expeditious and timely implementation of the State's fiscal year 2004 budget, emergency rules to implement any provision of this

amendatory Act of the 93rd General Assembly or any other budget initiative for fiscal year 2004 may be adopted in accordance with this Section by the agency charged with administering that provision or initiative, except that the 24-month limitation on the adoption of emergency rules and the provisions of Sections 5-115 and 5-125 do not apply to rules adopted under this subsection (i). The adoption of emergency rules authorized by this subsection (i) shall be deemed to be necessary for the public interest, safety, and welfare.

- (j) In order to provide for the expeditious and timely implementation of the provisions of the State's fiscal year 2005 budget as provided under the Fiscal Year 2005 Budget Implementation (Human Services) Act, emergency rules to implement any provision of the Fiscal Year 2005 Budget Implementation (Human Services) Act may be adopted in accordance with this Section by the agency charged with administering that provision, except that the 24-month limitation on the adoption of emergency rules and the provisions of Sections 5-115 and 5-125 do not apply to rules adopted under this subsection (j). The Department of Public Aid may also adopt rules under this subsection (j) necessary to administer the Illinois Public Aid Code and the Children's Health Insurance Program Act. The adoption of emergency rules authorized by this subsection (j) shall be deemed to be necessary for the public interest, safety, and welfare.
- (k) In order to provide for the expeditious and timely implementation of the provisions of the State's fiscal year 2006 budget, emergency rules to implement any provision of this amendatory Act of the 94th General Assembly or any other budget initiative for fiscal year 2006 may be adopted in accordance with this Section by the agency charged with administering that provision or initiative, except that the 24-month limitation on the adoption of emergency rules and the provisions of Sections 5-115 and 5-125 do not apply to rules adopted under this subsection (k). The Department of Healthcare and Family Services may also adopt rules under this subsection (k) necessary to administer the Illinois Public Aid Code, the Senior Citizens and Disabled Persons Property Tax Relief and Pharmaceutical Assistance Act, the Senior Citizens and Disabled Persons Prescription Drug Discount Program Act (now the Illinois Prescription Drug Discount Program Act), and the Children's Health Insurance Program Act. The adoption of emergency rules authorized by this subsection (k) shall be deemed to be necessary for the public interest, safety, and welfare.
- (l) In order to provide for the expeditious and timely implementation of the provisions of the State's fiscal year 2007 budget, the Department of Healthcare and Family Services may adopt emergency rules during fiscal year 2007, including rules effective July 1, 2007, in accordance with this subsection to the extent necessary to administer the Department's responsibilities with respect to amendments to the State plans and Illinois waivers approved by the federal Centers for Medicare and Medicaid Services necessitated by the requirements of Title XIX and Title XXI of the federal Social Security Act. The adoption of emergency rules authorized by this subsection (l) shall be deemed to be necessary for the public interest, safety, and welfare.



- (m) In order to provide for the expeditious and timely implementation of the provisions of the State's fiscal year 2008 budget, the Department of Healthcare and Family Services may adopt emergency rules during fiscal year 2008, including rules effective July 1, 2008, in accordance with this subsection to the extent necessary to administer the Department's responsibilities with respect to amendments to the State plans and Illinois waivers approved by the federal Centers for Medicare and Medicaid Services necessitated by the requirements of Title XIX and Title XXI of the federal Social Security Act. The adoption of emergency rules authorized by this subsection (m) shall be deemed to be necessary for the public interest, safety, and welfare.

## **Section 5-46 (Repealed)**

### **Section 5-46.1 Emergency rulemaking**

- a) The General Assembly finds that the State's current financial situation constitutes an emergency for the purposes of this Act.
- b) Beginning July 1, 1995, agencies may implement the changes made by this amendatory Act of 1995 or other budget reduction initiatives for Fiscal Year 1996 through the use of emergency rules in accordance with the provisions of Section 5-45 of this Act, except that the 24-month limitation on the adoption of similar emergency rules under Section 5-45 and the provisions of Sections 5-115 and 5-125 do not apply to rules adopted to implement changes made by this amendatory Act of 1995 or other budget reduction initiatives for Fiscal Year 1996.
- c) Agencies may implement the changes made by this amendatory Act of 1996 or other budget reduction initiatives for Fiscal Year 1997 through the use of emergency rules in accordance with the provisions of Section 5-45 of this Act, except that the 24-month limitation on the adoption of similar emergency rules under Section 5-45 and the provisions of Sections 5-115 and 5-125 do not apply to rules adopted to implement changes made by this amendatory Act of 1996 or other budget reduction initiatives for Fiscal Year 1997.

### **Section 5-46.2**

Sec. 5-46.2. Implementation of changes to State Medicaid plan. In order to provide for the timely and expeditious implementation of the federally approved amendment to the Title XIX State Plan as authorized by subsection (r-5) of Section 5A-12.1 of the Illinois Public Aid Code, the Department of Healthcare and Family Services may adopt any rules necessary to implement changes resulting from that amendment to the hospital access improvement payments authorized by Public Act 94-242 and subsection (d) of Section 5A-2 of the Illinois Public Aid Code. The Department is authorized to adopt rules implementing those changes by emergency rulemaking. This emergency rulemaking authority is granted by, and may be exercised only during, the 94th General Assembly.



## **Section 5-47 (Repealed)**

## **Section 5-50 Peremptory rulemaking**

"Peremptory rulemaking" means any rulemaking that is required as a result of federal law, federal rules and regulations, an order of a court, or a collective bargaining agreement pursuant to subsection (d) of Section 1-5, under conditions that preclude compliance with the general rulemaking requirements imposed by Section 5-40 and that preclude the exercise of discretion by the agency as to the content of the rule it is required to adopt. Peremptory rulemaking shall not be used to implement consent orders or other court orders adopting settlements negotiated by the agency. If any agency finds that peremptory rulemaking is necessary and states in writing its reasons for that finding, the agency may adopt peremptory rulemaking upon filing a notice of rulemaking with the Secretary of State under Section 5-70. The notice shall be published in the Illinois Register. A rule adopted under the peremptory rulemaking provisions of this Section becomes effective immediately upon filing with the Secretary of State and in the agency's principal office, or at a date required or authorized by the relevant federal law, federal rules and regulations, or court order, as stated in the notice of rulemaking. Notice of rulemaking under this Section shall be published in the Illinois Register, shall specifically refer to the appropriate State or federal court order or federal law, rules, and regulations, and shall be in a form as the Secretary of State may reasonably prescribe by rule. The agency shall file the notice of peremptory rulemaking within 30 days after a change in rules is required. The Department of Healthcare and Family Services may adopt peremptory rulemaking under the terms and conditions of this Section to implement final payments included in a State Medicaid Plan Amendment approved by the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services and authorized under Section 5A-12.2 of the Illinois Public Aid Code, and to adjust hospital provider assessments as Medicaid Provider-specific Taxes permitted by Title XIX of the federal Social Security Act and authorized under Section 5A-2 of the Illinois Public Aid Code.

## **Section 5-55 Automatic repeal of rules**

A rule may provide for its automatic repeal on a date specified in the rule. The repeal shall be effective on the date specified, provided that notice of the repeal is published in the Illinois Register not less than 30 nor more than 60 days before the effective date of the repeal. This Section does not apply to any rules filed under Section 5-45.

## **Section 5-60 Regulatory agenda**

An agency shall submit for publication in the Illinois Register by January 1 and July 1 of each year a regulatory agenda to elicit public comments concerning any rule that the agency is considering proposing but for which no notice of proposed rulemaking activity has been submitted to the Illinois Register. A regulatory agenda shall consist of summaries of those rules. Each summary shall, in less than 2,000 words, contain the following when practicable:

- 1) A description of the rule.
- 2) The statutory authority the agency is exercising.

- 3) A schedule of the dates for any hearings, meetings, or other opportunities for public participation in the development of the rule.
- 4) The date the agency anticipates submitting a notice of proposed rulemaking activity, if known.
- 5) The name, address, and telephone number of the agency representative who is knowledgeable about the rule, from whom any information may be obtained, and to whom written comments may be submitted concerning the rule.
- 6) A statement whether the rule will affect small businesses, not for profit corporations, or small municipalities as defined in this Act.
- 7) Any other information that may serve the public interest. Nothing in this Section shall preclude an agency from adopting a rule that has not been summarized in a regulatory agenda or from adopting a rule different than one summarized in a regulatory agenda if in the agency head's best judgment it is necessary. If an agency finds that a situation exists that requires adoption of a rule that was not summarized on either of the 2 most recent regulatory agendas, it shall state its reasons in writing together with the facts that form their basis upon filing the notice of proposed rulemaking with the Secretary of State under Section 5-40. Nothing in this Section shall require an agency to adopt a rule summarized in a regulatory agenda. The Secretary of State shall adopt rules necessary for the publication of a regulatory agenda, including but not limited to standard submission forms and deadlines.

#### **Section 5-65 Filing of rules**

- a) Each agency shall file in the office of the Secretary of State and in the agency's principal office a certified copy of each rule and modification or repeal of any rule adopted by it. The Secretary of State and the agency shall each keep a permanent register of the rules open to public inspection. Whenever a rule or modification or repeal of any rule is filed with the Secretary of State, the Secretary shall send a certified copy of the rule, modification or repeal, within 3 working days after it is filed, to the Joint Committee on Administrative Rules.
- b) Concurrent with the filing of any rule under this Section, the filing agency shall submit to the Secretary of State for publication in the next available issue of the Illinois Register a notice of adopted rules. The notice shall include the following:
  - 1) The text of the adopted rule, including the full text of the new rule (if the material is a new rule), the full text of the rule or rules as amended (if the material is an amendment to a rule or rules), or the notice of repeal (if the material is a repealer).
  - 2) The name, address, and telephone number of an individual who will be available to answer questions and provide information to the public concerning the adopted rules.
  - 3) Other information that the Secretary of State may by rule require in the interest of informing the public.

#### **Section 5-70 Form and publication of notices**

- a) The Secretary of State may prescribe reasonable rules concerning the form of documents to be filed with the Secretary of State and may refuse to accept for filing certified copies that do not comply with the rules. In addition, the Secretary of State shall publish and maintain the Illinois Register and may prescribe reasonable rules setting forth the manner in which agencies shall submit notices required by this Act for publication in the Illinois Register. The Illinois Register shall be published at least once each week on the same day (unless that day is an official State holiday, in which case the Illinois Register shall be published on the next following business day) and sent to subscribers who subscribe for the publication with the Secretary of State. The Secretary of State may charge a subscription price to subscribers that covers mailing and publication costs.
- b) The Secretary of State shall accept for publication in the Illinois Register all Pollution Control Board documents, including but not limited to Board opinions, the results of Board determinations concerning adjusted standards proceedings, notices of petitions for individual adjusted standards, results of Board determinations concerning the necessity for economic impact studies, restricted status lists, hearing notices, and any other documents related to the activities of the Pollution Control Board that the Board deems appropriate for publication.

#### **Section 5-75 Incorporation by reference**

- a) An agency may incorporate by reference, in its rules adopted under Section 5-35, rules, regulations, standards, and guidelines of an agency of the United States or a nationally or state recognized organization or association without publishing the incorporated material in full. The reference in the agency rules must fully identify the incorporated matter by publisher address and date in order to specify how a copy of the material may be obtained and must state that the rule, regulation, standard, or guideline does not include any later amendments or editions. An agency may incorporate by reference these matters in its rules only if the agency, organization, or association originally issuing the matter makes copies readily available to the public. This Section does not apply to any agency internal manual. For any law imposing taxes on or measured by income, the Department of Revenue may promulgate rules that include incorporations by reference of federal rules or regulations without identifying the incorporated matter by date and without including a statement that the incorporation does not include later amendments.
- b) Use of the incorporation by reference procedure under this Section shall be reviewed by the Joint Committee on Administrative Rules during the rulemaking process as set forth in this Act.
- c) The agency adopting a rule, regulation, standard, or guideline under this Section shall maintain a copy of the referenced rule, regulation, standard, or guideline in at least one of its principal offices and shall make it available to the public upon request for inspection and copying at no more than cost. Requests for copies of materials incorporated by reference shall not be deemed Freedom of Information



Act requests unless so labeled by the requestor. The agency shall designate by rule the agency location at which incorporated materials are maintained and made available to the public for inspection and copying. These rules may be adopted under the procedures in Section 5-15. In addition, the agency may include the designation of the agency location of incorporated materials in a rulemaking under Section 5-35, but emergency and peremptory rulemaking procedures may not be used solely for this purpose.

## **Section 5-80 Publication of rules**

- a) The Secretary of State shall, by rule, prescribe a uniform system for the codification of rules. The Secretary of State shall also, by rule, establish a schedule for compliance with the uniform codification system. The Secretary of State shall not adopt any codification system or schedule under this subsection without the approval of the Joint Committee on Administrative Rules. Approval by the Joint Committee shall be conditioned solely upon establishing that the proposed codification system and schedule are compatible with existing electronic data processing equipment and programs maintained by and for the General Assembly. Nothing in this Section shall prohibit an agency from adopting rules in compliance with the codification system earlier than specified in the schedule.
- b) Each rule proposed in compliance with the codification system shall be reviewed by the Secretary of State before the expiration of the public notice period under subsection (b) of Section 5-40. The Secretary of State shall cooperate with agencies in the Secretary of State's review to insure that the purposes of the codification system are accomplished. The Secretary of State shall have the authority to make changes in the numbering and location of the rule in the codification scheme if those changes do not affect the meaning of the rules. The Secretary of State may recommend changes in the sectioning and headings proposed by the agency and suggest grammatical and technical changes to correct errors. The Secretary of State may add notes concerning the statutory authority, dates proposed and adopted, and other similar notes to the text of the rules, if the notes are not supplied by the agency. This review by the Secretary of State shall be for the purpose of insuring the uniformity of and compliance with the codification system. The Secretary of State shall prepare indexes by agency, subject matter, and statutory authority and any other necessary indexes, tables, and other aids for locating rules to assist the public in the use of the Code.
- c) The Secretary of State shall make available to the agency and the Joint Committee on Administrative Rules copies of the changes in the numbering and location of the rule in the codification scheme, the recommended changes in the sectioning and headings, and the suggestions made concerning the correction of grammatical and technical errors or other suggested changes. The agency, in the notice required by subsection (c) of Section 5-40, shall provide to the Joint Committee a response to the recommendations of the Secretary of State including any reasons for not adopting the recommendations.

- d) If a reorganization of agencies, transfer of functions between agencies, or abolishment of agencies by executive order or law affects rules on file with the Secretary of State, the Secretary of State shall notify the Governor, the Attorney General, and the agencies involved of the effects upon the rules on file. If the Governor or the agencies involved do not respond to the Secretary of State's notice within 45 days by instructing the Secretary of State to delete or transfer the rules, the Secretary of State may delete or place the rules under the appropriate agency for the purpose of insuring the consistency of the codification scheme and shall notify the Governor, the Attorney General, and the agencies involved.
- e) (Blank).
- f) The Secretary of State shall ensure that the Illinois Administrative Code is published and made available to the public in a form that is updated at least annually. The Code shall contain the complete text of all rules of all State agencies filed with the Secretary's office and effective on October 1, 1984, or later and the indexes, tables, and other aids for locating rules prepared by the Secretary of State. The Secretary of State shall design the Illinois Register to supplement the Code. The Secretary of State shall ensure that copies of the Illinois Register are available to the public and governmental entities and agencies. If the Secretary of State determines that the Secretary's office will publish and distribute either the Register or the Code, the Secretary shall make copies available to the public at a reasonable fee, established by the Secretary by rule, and shall make copies available to governmental entities and agencies at a price covering publication and mailing costs only. The Secretary of State shall make the electronically stored database of the Illinois Register and the Code available in accordance with this Section and Section 5.08 of the Legislative Information System Act.
- g) The publication of a rule in the Code or in the Illinois Register as an adopted rule shall establish a rebuttable presumption that the rule was duly filed and that the text of the rule as published in the Code is the text of the rule as adopted. Publication of the text of a rule in any other location whether by the agency or some other person shall not be taken as establishing such a presumption. Judicial or official notice shall be taken of the text of each rule published in the Code or Register.
- h) The codification system, the indexes, tables, and other aids for locating rules prepared by the Secretary of State, notes, and other materials developed under this Section in connection with the publication of the Illinois Administrative Code and the Illinois Register shall be the official compilations of the administrative rules of Illinois and shall be entirely in the public domain for purposes of federal copyright law.
- i) The Legislative Information System shall maintain on its electronic data processing equipment the complete text of the Illinois Register and Illinois Administrative Code created in compliance with this Act. This electronic information shall be made available for use in the publication of the Illinois Register and Illinois Administrative Code by the Secretary of State if the Secretary determines that his office will publish these materials as authorized by subsection (f).

- j) The Legislative Information System, upon consultation with the Joint Committee on Administrative Rules and the Secretary of State, shall make the electronically stored database of the Illinois Register and the Illinois Administrative Code available in an electronically stored medium to those who request it. The Legislative Information System shall establish and charge a reasonable fee for providing the electronic information. Amounts received under this Section shall be deposited into the General Assembly Computer Equipment Revolving Fund.

#### **Section 5-85 Correction of rules filed with the Secretary of State**

- a) Corrections to a proposed rulemaking that has been published in the Illinois Register but is not yet adopted shall be made pursuant to the rules of the Secretary of State. Corrections to an adopted rulemaking that has been published in the Illinois Register shall be made by initiating a new rulemaking or pursuant to subsection (b).
- b) Expedited corrections to any form of adopted rule that has been published in the Illinois Register shall be made pursuant to the procedures set forth in this subsection (b) and the rules of the Joint Committee on Administrative Rules adopted pursuant to this subsection (b). An agency may request that the Joint Committee on Administrative Rules issue a certification of correction under this subsection (b) to correct: (1) non-substantive errors such as typographical, clerical, grammatical, printing, copying or other inadvertent errors such as omission of existing or inclusion of previously repealed Illinois Administrative Code text; (2) any omissions or errors that create unintentional discrepancies between adopted rule text and text previously published in the Illinois Register or second notice rule text; or (3) any discrepancies between adopted rule text and agreements certified by the Joint Committee on Administrative Rules during the second notice period. In requesting the Joint Committee on Administrative Rules to issue a certification of correction, the agency shall specify which of the above reasons for correction is applicable and shall submit the full affected Section of the Code, indicating both the incorrect text and the agency's proposal for correcting the error. The Joint Committee on Administrative Rules shall verify that the requested correction meets the criteria of this subsection (b), that the public interest will be served and no hardship created by remediation of the error or omission more quickly than could be accomplished by the regular rulemaking process, and that the public notice considerations of this Act are not being unduly circumvented. Upon receiving a certification of correction from the Joint Committee on Administrative Rules, an agency shall file a notice of correction with the Secretary of State for publication in the next available issue of the Illinois Register. Pursuant to agreement between the Joint Committee on Administrative Rules and the agency, the effective date of the correction shall be identical to that of the adopted rule being corrected or a specified later date. The agency shall take reasonable and appropriate measures to make rule corrections known to persons who may be affected by them.



## **Section 5-90 Joint Committee on Administrative Rules**

- a) The Joint Committee on Administrative Rules is established as a legislative support services agency subject to the Legislative Commission Reorganization Act of 1984. When feasible, the agenda of each meeting of the Joint Committee shall be submitted to the Secretary of State to be published at least 5 days before the meeting in the Illinois Register. The Joint Committee may also weekly, or as often as necessary, submit for publication in the Illinois Register lists of the dates on which notices under Section 5-40 were received and the dates on which the proposed rulemakings will be considered. The provisions of this subsection shall not prohibit the Joint Committee from acting upon an item that was not contained in the published agenda.
- b) The Joint Committee may charge reasonable fees for copies of documents or publications to cover the cost of copying or printing. The Joint Committee shall, however, provide copies of documents or publications without cost to agencies that are directly affected by recommendations or findings included in the documents or publications.

## **Section 5-95 Oaths and affirmations**

- a) The Executive Director of the Joint Committee or any designated person may administer oaths or affirmations and take affidavits or depositions of any person.
- b) The Executive Director, upon approval of a majority vote of the Joint Committee, or the presiding officers may subpoena and compel the attendance before the Joint Committee and examine under oath any person. They also may subpoena and compel the production for the Joint Committee of any records, books, papers, contracts, or other documents.
- c) If any person fails to obey a subpoena issued under this Section, the Joint Committee may apply to any circuit court to secure compliance with the subpoena. The failure to comply with the order of the court issued in response thereto shall be punished as a contempt.

## **Section 5-100 Powers of the Joint Committee**

The Joint Committee shall have the following powers under this Act:

- a) The function of the Joint Committee shall be the promotion of adequate and proper rules by agencies and an understanding on the part of the public respecting those rules. This function shall be advisory only, except as provided in Sections 5-115 and 5-125.
- b) The Joint Committee may undertake studies and investigations concerning rulemaking and agency rules.
- c) The Joint Committee shall monitor and investigate agencies' compliance with the provisions of this Act, make periodic investigations of the rulemaking activities of all agencies, and evaluate and report on all rules in terms of their propriety, legal

- adequacy, relation to statutory authorization, economic and budgetary effects, and public policy.
- d) Hearings and investigations conducted by the Joint Committee under this Act may be held at times and places within the State as the Committee deems necessary.
  - e) The Joint Committee may request from any agency an analysis of the following:
    - 1) The effect of a new rule, amendment, or repealer, including any direct economic effect on the persons regulated by the rule; any anticipated effect on the proposing agency's budget and the budgets of other State agencies; and any anticipated effects on State revenues.
    - 2) The agency's evaluation of the submissions presented to the agency under Section 5-40.
    - 3) A description of any modifications from the initially published proposal made in the finally accepted version of the intended rule, amendment, or repealer.
    - 4) The agency's justification and rationale for the intended rule, amendment, or repealer.
  - f) Failure of the Joint Committee to object to any proposed rule, amendment, or repealer or any existing rule shall not be construed as implying direct or indirect approval of the rule or proposed rule, amendment, or repealer by the Joint Committee or the General Assembly.

#### **Section 5-105 Responsibilities of the Joint Committee**

The Joint Committee shall have the following responsibilities under this Act:

- a) The Joint Committee shall conduct a systematic and continuing study of the rules and rulemaking process of all State agencies, including those agencies not covered in Section 1-25, for the purpose of improving the rulemaking process, reducing the number and bulk of rules, removing redundancies and unnecessary repetitions, and correcting grammatical, typographical, and similar errors not affecting the construction or meaning of the rules. The Joint Committee shall make recommendations to the appropriate affected agency.
- b) The Joint Committee shall review the statutory authority on which any administrative rule is based.
- c) The Joint Committee shall maintain a review program to study the impact of legislative changes, court rulings, and administrative action on agency rules and rulemaking.
- d) The Joint Committee shall suggest rulemaking by an agency whenever the Joint Committee, in the course of its review of the agency's rules under this Act, determines that the agency's rules are incomplete, inconsistent, or otherwise deficient.

#### **Section 5-110 Responsibilities of the Joint Committee with respect to proposed rules, amendments, or repealers**

- a) The Joint Committee shall examine any proposed rule, amendment to a rule, and repeal of a rule to determine whether the proposed rule, amendment to a rule, or repeal of a rule is within the statutory authority upon which it is based; whether the rule, amendment to a rule, or repeal of a rule is in proper form; and whether the notice was given before its adoption, amendment, or repeal and was sufficient to give adequate notice of the purpose and effect of the rule, amendment, or repeal. In addition, the Joint Committee may consider whether the agency has considered alternatives to the rule that are consistent with the stated objectives of both the applicable statutes and regulations and whether the rule is designed to minimize economic impact on small businesses.
- b) If the Joint Committee objects to a proposed rule, amendment to a rule, or repeal of a rule, it shall certify the fact to the issuing agency and include with the certification a statement of its specific objections.
- c) If within the second notice period the Joint Committee certifies its objections to the issuing agency, then that agency shall do one of the following within 90 days after receiving the statement of objection:
  - 1) Modify the proposed rule, amendment, or repealer to meet the Joint Committee's objections.
  - 2) Withdraw the proposed rule, amendment, or repealer in its entirety.
  - 3) Refuse to modify or withdraw the proposed rule, amendment, or repealer.
- d) If an agency elects to modify a proposed rule, amendment, or repealer to meet the Joint Committee's objections, it shall make those modifications that are necessary to meet the objections and shall resubmit the rule, amendment, or repealer to the Joint Committee. In addition, the agency shall submit a notice of its election to modify the proposed rule, amendment, or repealer to meet the Joint Committee's objections to the Secretary of State, and the notice shall be published in the first available issue of the Illinois Register, but the agency shall not be required to conduct a public hearing. If the Joint Committee determines that the modifications do not remedy the Joint Committee's objections, it shall so notify the agency in writing and shall submit a copy of that notification to the Secretary of State for publication in the next available issue of the Illinois Register. In addition, the Joint Committee may recommend legislative action as provided in subsection (g) for agency refusals.
- e) If an agency elects to withdraw a proposed rule, amendment, or repealer as a result of the Joint Committee's objections, it shall notify the Joint Committee in writing of its election and shall submit a notice of the withdrawal to the Secretary of State. The notice shall be published in the next available issue of the Illinois Register.
- f) Failure of an agency to respond to the Joint Committee's objections to a proposed rule, amendment, or repealer within the time prescribed in subsection (c) shall constitute withdrawal of the proposed rule, amendment, or repealer in its entirety. The Joint Committee shall submit a notice to that effect to the Secretary of State, and the notice shall be published in the next available issue of the Illinois Register. The Secretary of State shall refuse to accept for filing a certified copy of the proposed rule, amendment, or repealer under the provisions of Section 5-65.



- g) If an agency refuses to modify or withdraw the proposed rule, amendment, or repealer to remedy an objection stated by the Joint Committee, it shall notify the Joint Committee in writing of its refusal and shall submit a notice of refusal to the Secretary of State. The notice shall be published in the next available issue of the Illinois Register. If the Joint Committee decides to recommend legislative action in response to an agency refusal, then the Joint Committee shall have drafted and introduced into either house of the General Assembly appropriate legislation to implement the recommendations of the Joint Committee.
- h) No rule, amendment, or repeal of a rule shall be accepted by the Secretary of State for filing under Section 5-65, if the rulemaking is subject to this Section, until after the agency has responded to the objections of the Joint Committee as provided in this Section.

### **Section 5-115 Other action by the Joint Committee**

- a) If the Joint Committee determines that the adoption and effectiveness of a proposed rule, amendment, or repealer or portion of a proposed rule, amendment, or repealer by an agency would be objectionable under any of the standards for the Joint Committee's review specified in Section 5-100, 5-105, 5-110, 5-120, or 5-130 and would constitute a serious threat to the public interest, safety, or welfare, the Joint Committee may issue a statement to that effect at any time before the proposed rule, amendment, or repealer takes effect. The statement may be issued by the Joint Committee only upon the affirmative vote of three-fifths of the members appointed to the Joint Committee. The Joint Committee, however, may withdraw a statement within 180 days after it is issued upon the affirmative vote of a majority of the members appointed to the Joint Committee. A certified copy of each statement and withdrawal shall be transmitted to the proposing agency and to the Secretary of State for publication in the next available issue of the Illinois Register.
- b) The proposed rule, amendment, or repealer or the portion of the proposed rule, amendment, or repealer to which the Joint Committee has issued a statement under subsection (a) shall not be accepted for filing by the Secretary of State nor take effect unless the statement is withdrawn or a joint resolution is passed as provided in subsection (c). The agency may not enforce or invoke for any reason a proposed rule, amendment, or repealer or any portion thereof that is prohibited from being filed by this subsection.
- c) After the issuance of a statement under subsection (a), any member of the General Assembly may introduce in the General Assembly a joint resolution stating that the General Assembly desires to discontinue the prohibition against the proposed rule, amendment, or repealer or the portion thereof to which the statement was issued being filed and taking effect. If the joint resolution is not passed by both houses of the General Assembly within 180 days after receipt of the statement by the Secretary of State or the statement is not withdrawn as provided in subsection (a), the agency shall be prohibited from filing the proposed rule, amendment, or repealer or the portion thereof and the proposed rule, amendment, or repealer or

the portion thereof shall not take effect. The Secretary of State shall not accept for filing the proposed rule, amendment, or repealer or the portion thereof with respect to which the Joint Committee has issued a statement under subsection (a) unless that statement is withdrawn or a joint resolution is passed as provided in this subsection. If the 180-day period expires before passage of the joint resolution, the agency may not file the proposed rule, amendment, or repealer or the portion thereof as adopted and it shall not take effect.

- d) If a statement is issued under this Section, then, in response to an objection or suggestion of the Joint Committee, the agency may propose changes to the proposed rule, amendment, or repealer or portion of a proposed rule, amendment, or repealer. If the agency proposes changes, it must provide additional notice to the Joint Committee under the same terms and conditions and shall be subject to the same requirements and limitations as those set forth for a second notice period under subsection (c) of Section 5-40.

#### **Section 5-120 Responsibilities of the Joint Committee with respect to emergency, peremptory, and other existing rules**

- a) The Joint Committee may examine any rule to determine whether the rule is within the statutory authority upon which it is based and whether the rule is in proper form.
- b) If the Joint Committee objects to a rule, it shall, within 5 days of the objection, certify the fact to the adopting agency and include within the certification a statement of its specific objections.
- c) Within 90 days after receiving the certification, the agency shall do one of the following:
  - 1) Notify the Joint Committee that it has elected to amend the rule to meet the Joint Committee's objection.
  - 2) Notify the Joint Committee that it has elected to repeal the rule.
  - 3) Notify the Joint Committee that it refuses to amend or repeal the rule.
- d) If the agency elects to amend a rule to meet the Joint Committee's objections, it shall notify the Joint Committee in writing and shall initiate rulemaking procedures for that purpose by giving notice as required by Section 5-35. The Joint Committee shall give priority to rules so amended when setting its agenda.
- e) If the agency elects to repeal a rule as a result of the Joint Committee's objections, it shall notify the Joint Committee in writing of its election and shall initiate rulemaking procedures for that purpose by giving notice as required by Section 5-35.
- f) If the agency elects to amend or repeal a rule as a result of the Joint Committee's objections, it shall complete the process within 180 days after giving notice in the Illinois Register.
- g) Failure of the agency to respond to the Joint Committee's objections to a rule within the time prescribed in subsection (c) shall constitute a refusal to amend or repeal the rule.

- h) If an agency refuses to amend or repeal a rule to remedy an objection stated by the Joint Committee, it shall notify the Joint Committee in writing of its refusal and shall submit a notice of refusal to the Secretary of State. The notice shall be published in the next available issue of the Illinois Register. If the Joint Committee, in response to an agency refusal, decides to suspend the rule, then it may do so pursuant to Section 5-125.

**Section 5-125 Other Joint Committee action with respect to emergency or preemptory rulemaking**

- a) If the Joint Committee determines that a rule or portion of a rule adopted under Section 5-45 or 5-50 is objectionable under any of the standards for the Joint Committee's review specified in Section 5-100, 5-105, 5-110, 5-120, or 5-130 and constitutes a serious threat to the public interest, safety, or welfare, the Joint Committee may issue a statement to that effect. The statement may be issued by the Joint Committee only upon the affirmative vote of three-fifths of the members appointed to the Joint Committee. The Joint Committee, however, may withdraw a statement within 180 days after it is issued upon the affirmative vote of a majority of the members appointed to the Joint Committee. A certified copy of each statement and withdrawal shall be transmitted to the affected agency and to the Secretary of State for publication in the next available issue of the Illinois Register. Within 30 days of transmittal of the statement to the agency, the agency shall notify the Joint Committee in writing whether it has elected to repeal or amend the rule. Failure of the agency to notify the Joint Committee and Secretary of State within 30 days constitutes a decision by the agency to not repeal the rule.
- b) The effectiveness of the rule or the portion of a rule shall be suspended immediately upon receipt of the certified statement by the Secretary of State. The Secretary of State shall indicate the suspension prominently and clearly on the face of the affected rule or the portion of a rule filed in the Office of the Secretary of State. Rules or portions of rules suspended under this subsection shall not become effective again unless the statement is withdrawn as provided in subsection (a) or unless within 180 days from receipt of the statement by the Secretary of State, the General Assembly discontinues the suspension by joint resolution under subsection (c). The agency may not enforce, or invoke for any reason, a rule or portion of a rule that has been suspended under this subsection. During the 180-day period, the agency may not file, nor may the Secretary of State accept for filing, any rule that (i) has the same purpose and effect as rules or portions of rules suspended under this subsection or (ii) does not substantially address the statement issued under subsection (a), except as otherwise provided in this Section.
- c) After the issuance of a statement under subsection (a), any member of the General Assembly may introduce in the General Assembly a joint resolution stating that the General Assembly desires to discontinue the suspension of effectiveness of a rule or the portion of the rule to which the statement was issued. If the joint resolution is not passed by both houses of the General



Assembly within the 180-day period provided in subsection (b) or the statement is not withdrawn, the rule or the portion of the rule shall be considered repealed and the Secretary of State shall immediately remove the rule or portion of a rule from the collection of effective rules.

- d) If a statement is issued under this Section, then, in response to an objection or suggestion of the Joint Committee, the agency may propose changes to the rule, amendment, or repealer or portion of a rule, amendment, or repealer. If the agency proposes changes, it must provide additional notice to the Joint Committee under the same terms and conditions and shall be subject to the same requirements and limitations as those set forth for a second notice period under subsection (c) of Section 5-40.

### **Section 5-130 Periodic review of existing rules**

- a) The Joint Committee shall evaluate the rules of each agency at least once every 5 years. The Joint Committee by rule shall develop a schedule for this periodic evaluation. In developing this schedule the Joint Committee shall group rules by specified areas to assure the evaluation of similar rules at the same time. The schedule shall include at least the following categories:
  - 1) Human resources.
  - 2) Law enforcement.
  - 3) Energy.
  - 4) Environment.
  - 5) Natural resources.
  - 6) Transportation.
  - 7) Public utilities.
  - 8) Consumer protection.
  - 9) Licensing laws.
  - 10) Regulation of occupations.
  - 11) Labor laws.
  - 12) Business regulation.
  - 13) Financial institutions.
  - 14) Government purchasing.
- b) When evaluating rules under this Section, the Joint Committee's review shall include an examination of the following:
  - 1) Organizational, structural, and procedural reforms that affect rules or rulemaking.
  - 2) Merger, modification, establishment, or abolition of regulations.
  - 3) Eliminating or phasing out outdated, overlapping, or conflicting regulatory jurisdictions or requirements of general applicability.
  - 4) Economic and budgetary effects.

### **Section 5-135 Administration of Act**

The Joint Committee may adopt rules to administer the provisions of this Act relating to the Joint Committee's responsibilities, powers, and duties under this Article 5.

#### **Section 5-140 Reports to the General Assembly**

The Joint Committee shall report its findings, conclusions, and recommendations, including suggested legislation, to the General Assembly by February 1 of each year. The requirement for reporting to the General Assembly shall be satisfied by filing copies of the report with the Speaker, the Minority Leader, and the Clerk of the House of Representatives, the President, the Minority Leader, and the Secretary of the Senate, and the Legislative Research Unit, as required by Section 3.1 of the General Assembly Organization Act, and filing additional copies with the State Government Report Distribution Center for the General Assembly as required under paragraph (t) of Section 7 of the State Library Act.

#### **Section 5-145 Request for adoption of rules**

- a) An agency shall, in accordance with Section 5-35, adopt rules that implement recently enacted legislation of the General Assembly in a timely and expeditious manner.
- b) Any interested person may request an agency to adopt, amend, or repeal a rule. Each agency shall prescribe by rule the procedure for consideration and disposition of the person's request. If, within 30 days after submission of a request, the agency has not initiated rulemaking proceedings in accordance with Section 5-35, the request shall be deemed to have been denied.

#### **Section 5-150 Declaratory rulings**

- a) Requests for rulings. Each agency may in its discretion provide by rule for the filing and prompt disposition of petitions or requests for declaratory rulings as to the applicability to the person presenting the petition or request of any statutory provision enforced by the agency or of any rule of the agency. Declaratory rulings shall not be appealable. The agency shall maintain as a public record in the agency's principal office and make available for public inspection and copying any such rulings. The agency shall delete trade secrets or other confidential information from the ruling before making it available.
- b) Overlapping regulations.
  - 1) Any persons subject to a rule imposed by a State agency and to a similar rule imposed by the federal government may petition the agency administering the State rule for a declaratory ruling as to whether compliance with the federal rule will be accepted as compliance with the State rule.
  - 2) If the agency determines that compliance with the federal rule would not satisfy the purposes or relevant provisions of the State law involved, the agency shall so inform the petitioner in writing, stating the reasons for the determination, and may issue a declaratory ruling to that effect.

- 3) If the agency determines that compliance with the federal rule would satisfy the purposes and relevant provisions of the State law involved but that it would not satisfy the relevant provisions of the State rule involved, the agency shall so inform the petitioner and the Joint Committee on Administrative Rules, and the agency may initiate a rulemaking proceeding in accordance with Section 5-35 to consider revising the rule to accept compliance with the federal rule in a manner that is consistent with the purposes and relevant provisions of the State law.
- 4) If the agency determines that compliance with the federal rule would satisfy the purposes and relevant provisions of the State law and the State rule involved, the agency shall issue a declaratory ruling indicating its intention to accept compliance with the federal rule as compliance with the State rule and the terms and conditions under which it intends to do so.

### **Section 5-155 References to this Act**

After the effective date of this amendatory Act of 1991, when rules contain references to Sections of this Act as they were numbered before the effective date of this amendatory Act of 1991, agencies shall within one year amend those rules to change the references to the Section numbers created by this amendatory Act of 1991. The amendment may be adopted by filing with the Secretary of State for publication in the Illinois Register a notice that lists the precise regulatory citations of the obsolete statutory references that are being revised and the new citation for each. Upon filing a notice, the agency shall also certify to the Secretary of State a copy of each rule that contains an amended citation for the Illinois Administrative Code. All such certified rules shall be adopted and effective immediately upon filing.

### **Section 5-160 Certain provisions of the Illinois Public Aid Code control over provisions of this Act**

In the event that any provisions of this Act are in conflict with the provisions of Section 4-2 of the Illinois Public Aid Code, the provisions of Section 4-2 of the Illinois Public Aid Code shall control.

### **Section 5-165 Ex parte communications in rulemaking; special government agents.**

- a) Notwithstanding any law to the contrary, this Section applies to ex parte communications made during the rulemaking process.
- b) "Ex parte communication" means any written or oral communication by any person during the rulemaking period that imparts or requests material information or makes a material argument regarding potential action concerning an agency's general, emergency, or peremptory rulemaking under this Act and that is communicated to that agency, the head of that agency, or any other employee of that agency. For purposes of this Section, the rulemaking period begins upon the commencement of the first notice period with respect to general rulemaking under Section 5-40, upon the filing of a notice of emergency rulemaking under Section



5-45, or upon the filing of a notice of rulemaking with respect to peremptory rulemaking under Section 5-50. "Ex parte communication" does not include the following: (i) statements by a person publicly made in a public forum; (ii) statements regarding matters of procedure and practice, such as the format of public comments, the number of copies required, the manner of filing such comments, and the status of a rulemaking proceeding; and (iii) statements made by a State employee of that agency to the agency head or other employee of that agency.

- c) An ex parte communication received by any agency, agency head, or other agency employee shall immediately be reported to that agency's ethics officer by the recipient of the communication and by any other employee of that agency who responds to the communication. The ethics officer shall require that the ex parte communication promptly be made a part of the record of the rulemaking proceeding. The ethics officer shall promptly file the ex parte communication with the Executive Ethics Commission, including all written communications, all written responses to the communications, and a memorandum prepared by the ethics officer stating the nature and substance of all oral communications, the identity and job title of the person to whom each communication was made, all responses made, the identity and job title of the person making each response, the identity of each person from whom the written or oral ex parte communication was received, the individual or entity represented by that person, any action the person requested or recommended, and any other pertinent information. The disclosure shall also contain the date of any ex parte communication.
- d) Failure to take certain actions under this Section may constitute a violation as provided in Section 5-50 of the State Officials and Employees Ethics Act.

## **ARTICLE 10. ADMINISTRATIVE HEARINGS**

### **Section 10-5 Rules required for hearings**

All agencies shall adopt rules establishing procedures for contested case hearings.

## **Section 10-10 Components of rules**

All agency rules establishing procedures for contested cases shall at a minimum comply with the provisions of this Article 10. In addition, agency rules establishing procedures may include, but need not be limited to, the following components: pre-hearing conferences, representation interview or deposition procedures, default procedures, selection of administrative law judges, the form of the final order, the standard of proof used, which agency official makes the final decision, representation of parties, subpoena request procedures, discovery and protective order procedures, and any review or appeal process within the agency.

## **Section 10-15 Standard of proof**

Unless otherwise provided by law or stated in the agency's rules, the standard of proof in any contested case hearing conducted under this Act by an agency shall be the preponderance of the evidence.

## **Section 10-20 Qualifications of administrative law judges**

All agencies shall adopt rules concerning the minimum qualifications of administrative law judges for contested case hearings. The agency head or an attorney licensed to practice law in Illinois may act as an administrative law judge or panel for an agency without adopting any rules under this Section. These rules may be adopted using the procedures in either Section 5-15 or 5-35.

## **Section 10-25 Contested cases; notice; hearing**

- a) In a contested case, all parties shall be afforded an opportunity for a hearing after reasonable notice. The notice shall be served personally or by certified or registered mail or as otherwise provided by law upon the parties or their agents appointed to receive service of process and shall include the following:
  - 1) A statement of the time, place, and nature of the hearing.
  - 2) A statement of the legal authority and jurisdiction under which the hearing is to be held.
  - 3) A reference to the particular Sections of the substantive and procedural statutes and rules involved.
  - 4) Except where a more detailed statement is otherwise provided for by law, a short and plain statement of the matters asserted, the consequences of a failure to respond, and the official file or other reference number.
  - 5) The names and mailing addresses of the administrative law judge, all parties, and all other persons to whom the agency gives notice of the hearing unless otherwise confidential by law.
- b) An opportunity shall be afforded all parties to be represented by legal counsel and to respond and present evidence and argument.
- c) Unless precluded by law, disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

### **Section 10-30 Disqualification of administrative law judge**

- a) The agency head, one or more members of the agency head, or any other person meeting the qualifications set forth by rule under Section 10-20 may be the administrative law judge.
- b) The agency shall provide by rule for disqualification of an administrative law judge for bias or conflict of interest. An adverse ruling, in and of itself, shall not constitute bias or conflict of interest.

### **Section 10-35 Record in contested cases**

- a) The record in a contested case shall include the following:
  - 1) All pleadings (including all notices and responses thereto), motions, and rulings.
  - 2) All evidence received.
  - 3) A statement of matters officially noticed.
  - 4) Any offers of proof, objections, and rulings thereon.
  - 5) Any proposed findings and exceptions.
  - 6) Any decision, opinion, or report by the administrative law judge.
  - 7) All staff memoranda or data submitted to the administrative law judge or members of the agency in connection with their consideration of the case that are inconsistent with Section 10-60.
  - 8) Any communication prohibited by Section 10-60.  
No such communication shall form the basis for any finding of fact.
- b) Oral proceedings or any part thereof shall be recorded stenographically or by other means that will adequately insure the preservation of the testimony or oral proceedings and shall be transcribed on the request of any party.
- c) Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

### **Section 10-40 Rules of evidence; official notice**

In contested cases:

- a) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence and privilege as applied in civil cases in the circuit courts of this State shall be followed. Evidence not admissible under those rules of evidence may be admitted, however, (except where precluded by statute) if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced, any part of the evidence may be received in written form.
- b) Subject to the evidentiary requirements of subsection (a) of this Section a party may conduct cross-examination required for a full and fair disclosure of the facts.



- c) Notice may be taken of matters of which the circuit courts of this State may take judicial notice. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

#### **Section 10-45 Proposal for decision**

Except where otherwise expressly provided by law, when in a contested case a majority of the officials of the agency who are to render the final decision has not heard the case or read the record, the decision, if adverse to a party to the proceeding other than the agency, shall not be made until a proposal for decision is served upon the parties and an opportunity is afforded to each party adversely affected to file exceptions and to present a brief and, if the agency so permits, oral argument to the agency officials who are to render the decision. The proposal for decision shall contain a statement of the reasons therefor and of each issue of fact or law necessary to the proposed decision and shall be prepared by the persons who conducted the hearing or one who has read the record.

#### **Section 10-50 Decisions and orders**

- a) A final decision or order adverse to a party (other than the agency) in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Parties or their agents appointed to receive service of process shall be notified either personally or by registered or certified mail of any decision or order. Upon request a copy of the decision or order shall be delivered or mailed forthwith to each party and to his attorney of record.
- b) All agency orders shall specify whether they are final and subject to the Administrative Review Law.
- c) A decision by any agency in a contested case under this Act shall be void unless the proceedings are conducted in compliance with the provisions of this Act relating to contested cases, except to the extent those provisions are waived under Section 10-70 and except to the extent the agency has adopted its own rules for contested cases as authorized in Section 1-5.

#### **Section 10-55 Expenses and attorney's fees**

- a) In any contested case initiated by any agency that does not proceed to court for judicial review and on any issue where a court does not have jurisdiction to make an award of litigation expenses under Section 2-611 of the Civil Practice Law, any allegation made by the agency without reasonable cause and found to be untrue shall subject the agency making the allegation to the payment of the reasonable expenses, including reasonable attorney's fees, actually incurred in defending against that allegation by the party against whom the case was initiated. A claimant may not recover litigation expenses when the parties have executed a settlement agreement that, while not stipulating liability or violation, requires the claimant to take correction action or pay a monetary sum.
- b) The claimant shall make a demand for litigation expenses to the agency. If the claimant is dissatisfied because of the agency's failure to make any award or because of the insufficiency of the agency's award, the claimant may petition the Court of Claims for the amount deemed owed. If allowed any recovery by the Court of Claims, the claimant shall also be entitled to reasonable attorney's fees and the reasonable expenses incurred in making a claim for the expenses incurred in the administrative action. The Court of Claims may reduce the amount of the litigation expenses to be awarded under this Section, or deny an award, to the extent that the claimant engaged in conduct during the course of the proceeding that unduly and unreasonably protracted the final resolution of the matter in controversy.
- c) In any case in which a party has any administrative rule invalidated by a court for any reason, including but not limited to the agency's exceeding its statutory authority or the agency's failure to follow statutory procedures in the adoption of the rule, the court shall award the party bringing the action the reasonable expenses of the litigation, including reasonable attorney's fees.

#### **Section 10-60 Ex parte communications**

- a) Except in the disposition of matters that agencies are authorized by law to entertain or dispose of on an ex parte basis, agency heads, agency employees, and administrative law judges shall not, after notice of hearing in a contested case or licensing to which the procedures of a contested case apply under this Act, communicate, directly or indirectly, in connection with any issue of fact, with any person or party, or in connection with any other issue with any party or the representative of any party, except upon notice and opportunity for all parties to participate.
- b) However, an agency member may communicate with other members of the agency, and an agency member or administrative law judge may have the aid and advice of one or more personal assistants.
- c) An ex parte communication received by any agency head, agency employee, or administrative law judge shall be made a part of the record of the pending matter, including all written communications, all written responses to the communications, and a memorandum stating the substance of all oral

communications and all responses made and the identity of each person from whom the ex parte communication was received.

- d) Communications regarding matters of procedure and practice, such as the format of pleadings, number of copies required, manner of service, and status of proceedings, are not considered ex parte communications under this Section.

#### **Section 10-65 Licenses**

- a) When any licensing is required by law to be preceded by notice and an opportunity for a hearing, the provisions of this Act concerning contested cases shall apply.
- b) When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license shall continue in full force and effect until the final agency decision on the application has been made unless a later date is fixed by order of a reviewing court.
- c) Except as provided in Section 1-27 of the Department of Natural Resources Act, an application for the renewal of a license or a new license shall include the applicant's social security number. Each agency shall require the licensee to certify on the application form, under penalty of perjury, that he or she is not more than 30 days delinquent in complying with a child support order. Every application shall state that failure to so certify shall result in disciplinary action, and that making a false statement may subject the licensee to contempt of court. The agency shall notify each applicant or licensee who acknowledges a delinquency or who, contrary to his or her certification, is found to be delinquent or who after receiving notice, fails to comply with a subpoena or warrant relating to a paternity or a child support proceeding, that the agency intends to take disciplinary action. Accordingly, the agency shall provide written notice of the facts or conduct upon which the agency will rely to support its proposed action and the applicant or licensee shall be given an opportunity for a hearing in accordance with the provisions of the Act concerning contested cases. Any delinquency in complying with a child support order can be remedied by arranging for payment of past due and current support. Any failure to comply with a subpoena or warrant relating to a paternity or child support proceeding can be remedied by complying with the subpoena or warrant. Upon a final finding of delinquency or failure to comply with a subpoena or warrant, the agency shall suspend, revoke, or refuse to issue or renew the license. In cases in which the Department of Healthcare and Family Services (formerly Department of Public Aid) has previously determined that an applicant or a licensee is more than 30 days delinquent in the payment of child support and has subsequently certified the delinquency to the licensing agency, and in cases in which a court has previously determined that an applicant or licensee has been in violation of the Non-Support Punishment Act for more than 60 days, the licensing agency shall refuse to issue or renew or shall revoke or suspend that person's license based solely upon the certification of delinquency made by the Department of Healthcare and Family



Services (formerly Department of Public Aid) or the certification of violation made by the court. Further process, hearings, or redetermination of the delinquency or violation by the licensing agency shall not be required. The licensing agency may issue or renew a license if the licensee has arranged for payment of past and current child support obligations in a manner satisfactory to the Department of Healthcare and Family Services (formerly Department of Public Aid) or the court. The licensing agency may impose conditions, restrictions, or disciplinary action upon that license.

- d) Except as provided in subsection (c), no agency shall revoke, suspend, annul, withdraw, amend materially, or refuse to renew any valid license without first giving written notice to the licensee of the facts or conduct upon which the agency will rely to support its proposed action and an opportunity for a hearing in accordance with the provisions of this Act concerning contested cases. At the hearing, the licensee shall have the right to show compliance with all lawful requirements for the retention, continuation, or renewal of the license. If, however, the agency finds that the public interest, safety, or welfare imperatively requires emergency action, and if the agency incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. Those proceedings shall be promptly instituted and determined.
- e) Any application for renewal of a license that contains required and relevant information, data, material, or circumstances that were not contained in an application for the existing license shall be subject to the provisions of subsection (a).

#### **Section 10-70 Waiver**

Compliance with any or all of the provisions of this Act concerning contested cases may be waived by written stipulation of all parties.

### **ARTICLE 15. SEVERABILITY AND EFFECTIVE DATE**

#### **Section 15-5 Severability**

If any provision of this Act or the application of any provision of this Act to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and for this purpose the provisions of this Act are severable.

#### **Section 15-10 Effective date**

This Act takes effect upon becoming law.







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